

**IN THE MATTER OF SHIRLEY AND
MICHAEL VESPER AND CREATING
MEMORIES CHILDREN’S LEARNING
CENTER, INC.**

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Philip Winter
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Opposing the Petition

Before: Lynn A. Robeson, Hearing Examiner

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I. STATEMENT OF THE CASE

Filed on June 12, 2012, Petitioners, Shirley and Michael Vesper and Creative Memories Children's Learning Center, Inc., seek a special exception to permit construction of a child daycare facility pursuant to §59-G-2.13.1 of the Zoning Ordinance on property located at 22929 Frederick Road, Clarksburg, Maryland.

Technical Staff recommended approval of the application in a report dated November 16, 2012. Exhibit 19. The public hearing, scheduled for December 14, 2012 (Exhibit 15) was convened, but only to postpone the case to January 25, 2013, with the consent of the Petitioners, because the Hearing Examiner had not received the recommendation of the Planning Board. Exhibits 25 and 26. The Hearing Examiner received the Planning Board's recommendation to approve the special exception on December 20, 2012, subject to conditions and the recommendation that the Petitioners provide additional traffic and noise studies for the public hearing before the Hearing Examiner. Exhibit 27. The Petitioners submitted both studies prior to the public hearing. Exhibits 28(a) and 47.

The January 25, 2013, public hearing proceeded as scheduled. At the public hearing, the Petitioners' attorney reported that the sign posting the property had been removed within the last two weeks. The record was held open until February 11, 2013, to permit additional time for posting the sign and to permit those opposing the application, Mr. and Mrs. Philip Winter, an opportunity to respond to the traffic and noise studies and, if they wished, to request cross-examination of Petitioners' noise expert. 1/25/13 T. 229-230.¹ Mr. and Mrs. Winter had until February 7, 2013, to request cross-examination or provide a further response on the Petitioners' sound study.

The Petitioners submitted an amended Affidavit of Posting stating that the sign had been continuously posted from the day of the public hearing. Exhibit 49. The Hearing Examiner did not

¹ The remainders of the transcript citations in this report are to the January 25, 2013, public hearing transcript.

receive a request for cross-examination or a direct response from the Winter's to the noise study submitted at the public hearing. Through the Petitioners' attorney, however, she did receive questions posed to the sound consultant by Mr. Andy Roy, Mr. and Mrs. Winter's son-in-law and resident of the property immediately to the south. Mr. Roy submitted these questions directly to Petitioners' sound consultant on February 7, 2013, but did not submit them to the Hearing Examiner. Rather, Mr. Roy's questions were included in a submission from the Petitioners (dated February 12, 2013 (Exhibit 50(a)), along with the consultant's responses to Mr. Roy's questions (Exhibit 50(b)). While the consultant's responses were dated February 11, 2013, however, they were not submitted to the Hearing Examiner until February 12, 2013 (Exhibit 50). Receiving no objection to these submittals and because the discrepancy was minor, the Hearing Examiner issued an order dated March 18, 2013, re-opening the record solely to admit Exhibit 50 and the March 18th order. Exhibit 52. The Hearing Examiner further extended the time to submit her report (Exhibit 51) and the record closed on March 18, 2013.

II. FACTUAL BACKGROUND

A. The Subject Property

The subject property, zoned R-200, is located on the east side of Md. Route 355 (also called Frederick Road) approximately 2,300 feet south of Stringtown Road in Clarksburg, Maryland. Consisting of 1.05 acres, it is improved with a 2,780 square foot, one-story single family detached dwelling with an asphalt driveway on the north side of the property. A photograph submitted by the Petitioners (Exhibit 41(a), shown on the following page) shows the existing home.

Technical Staff reports, and the Petitioners' expert civil engineer confirms, that the property slopes gradually downward from the south and east to west and north, becoming



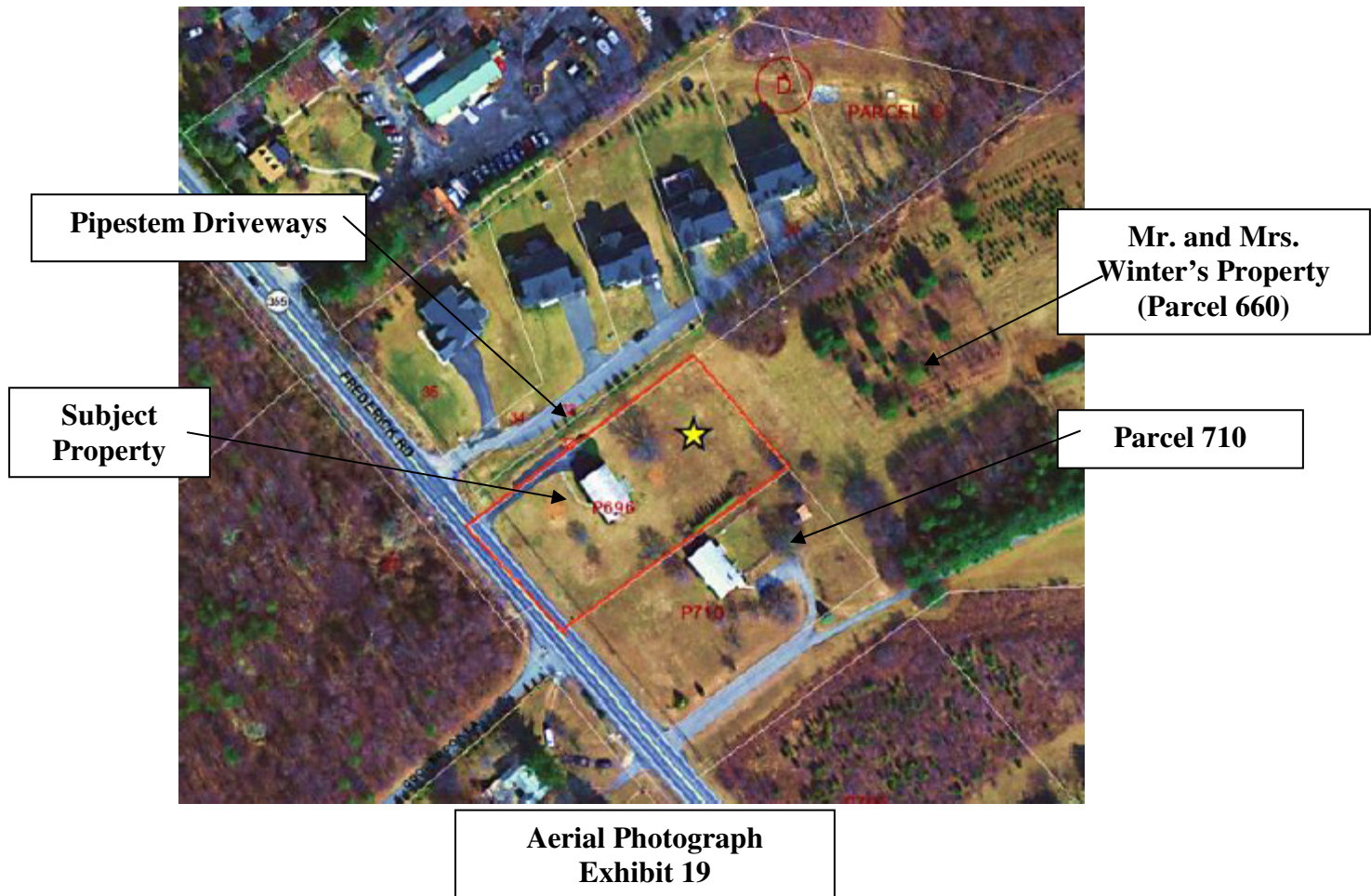
Exhibit 41(a)

steeper as it approaches the north and west property lines. Exhibit 19, p. 4; T. 110. The properties adjacent to the north are improved with five single-family homes each accessed by pipestem driveways. The driveways are adjacent to the property line; the homes themselves are approximately 75 feet from the subject property. Adjacent to the eastern property line is a 10-acre parcel (designated as Parcel 660 on the tax map) owned by Mr. and Mrs. Winter. To the south, the Winter's daughter and her husband own a one-acre parcel (Parcel 710 on the tax map).² An aerial photograph depicting the subject property and immediately surrounding uses, included in the Technical Staff Report (Exhibit 19, p. 4) is shown on the next page.

B. The Surrounding Area

For the purpose of determining the compatibility of the project, Technical Staff delineated the surrounding area to include the residential developments known as Gateway Commons, Garnkirk Farms and Clarksbrook Estates.

² In this Report, Mr. and Mrs. Winter's property will be referred to as Parcel 660 or "Winter's property" and their daughter's property as Parcel 710.



Staff characterizes the neighborhood as consisting primarily of single family residential dwellings and undeveloped parcels in the R-200 Zone “with the exception of a small area of RMX Zoned properties along Stringtown Road.” *Id.* A map from the Technical Staff Report, showing the border of Staff’s neighborhood in red, is on the next page.

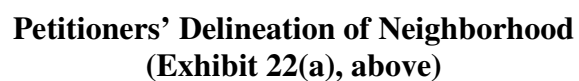
The Petitioners delineate a smaller neighborhood that includes the surrounding properties zoned R-200, but excludes the RMX developments to the north, also shown on the following page. (Exhibit 22(a), Attachment B). Ms. Victoria Bryant, the Petitioners’ expert land planner, testified that the northern border of the neighborhood as she defines it runs along properties to the north of Suncrest Avenue along Timber Creek Lane to the east, Shawnee Lane to the south, and generally to the rear property lines of properties fronting Md. Route 355 to the west. T. 27-28. While acknowledging that the neighborhood she delineates is smaller than that defined by



Subject Property

Neighborhood Boundary

Subject Property



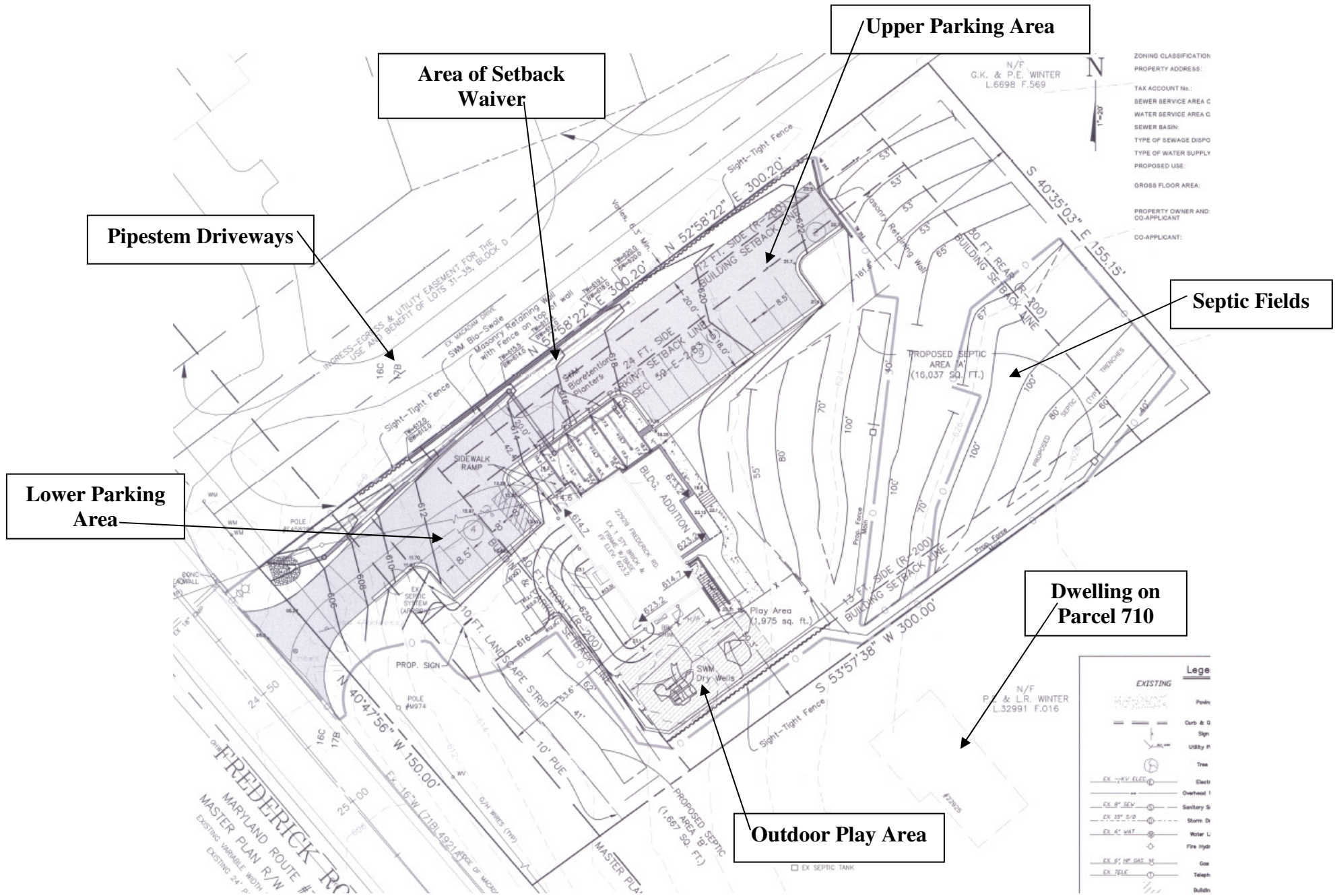
Technical Staff, Ms. Bryant believes that there is no significant difference between the two. She used the smaller neighborhood boundaries to follow those properties identified in the Master Plan as being in the "Transit Corridor". The properties included by Staff to the north are in the RMX Zone, which are single-family detached homes, although more compactly developed. She believes that both delineations are characterized by properties with a variety of sizes and shapes; addition of the RMX development just adds to the diversity. T. 28.

The Hearing Examiner agrees with Staff's larger delineation of the neighborhood. Neighborhoods generally include those properties which will be impacted by the proposed development. Because of the proximity of these homes to the subject property, the fact that they may utilize the daycare use, and the fact that both are located proximate to Frederick Road, the Hearing Examiner finds that the larger delineation is appropriate here.

At the same time, the Hearing Examiner agrees with Petitioners' expert that the larger delineation does not significantly change the character of the neighbor because she agrees that the addition of the RMX-zoned properties only changes the compactness of development, but does not change the single-family detached character of the neighborhood.

C. Proposed Use

Petitioners propose to modify the existing dwelling on the property for use as a daycare facility. These modifications are both exterior and interior and include a 1,150 square foot addition on the rear of the existing structure. Technical Staff and the Petitioners agree that the total size of the daycare will be 3,930 square feet on two levels of 1,965 square feet each. Exhibit 19 and 21(a), p. 6. Exterior modifications to the existing improvements include widening the driveway to meet commercial standards, creating a parking area to the north with 15 spaces, and adding a 1,975 square foot outdoor play area on the southern side of the building. A site plan submitted by the Petitioners (Exhibit 18(b)) is reproduced on the following page.



In order to upgrade the driveway to commercial standards and create the parking area, Petitioners' are requesting an 18-foot waiver of the minimum setback for parking facilities set forth in §59-E-2.81 of the Zoning Ordinance, which requires a setback equal to the building setback in the underlying zone.³ According to Technical Staff, the driveway/parking is set back approximately 6 to 7.7 feet from the northern property line and the required setback in the R-200 Zone is 24 feet, as discussed more fully below. Exhibit 19, p. 10.

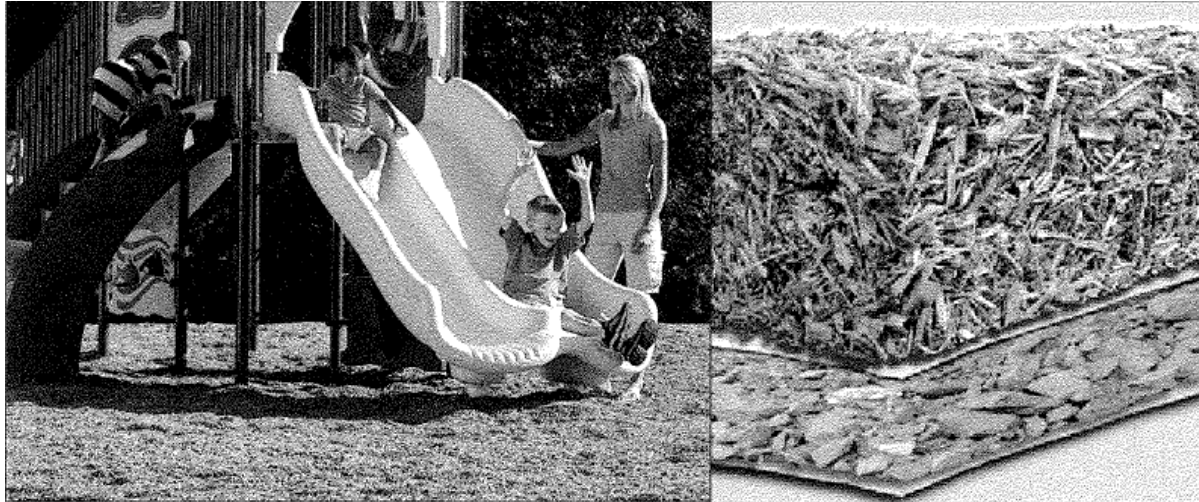
1. Site Plan and Exterior Modifications

Ms. Bryant described the site plan (Exhibit 18(b), shown on page 9) and exterior site modifications. The existing driveway will be widened to 20 feet. Upon entering the driveway, there will be 4 parking spaces on the right side (referred to as the "lower" parking area) with an ADA accessible van space. The site plan proposes two entrances; the handicapped space will be close to an entrance on the northern side of the property through a covered porch. People parking in the lower level may enter there or by following a sidewalk leading to the basement. An additional 11 parking spaces are located to the rear of the building (the "upper" parking area). A path along the rear of the property leads to the outdoor play area. The play area may also be accessed from the lower level through a staircase and the upper level through a sidewalk. T. 34-35. The addition extends from the rear of the dwelling toward the eastern property line. Septic fields are located in an open area on the southeast portion of the property. T. 113-114.

According to Ms. Bryant, the outdoor play area will have Little Tykes play equipment with an engineered wood surface, examples of which are shown on the site plan detail (Exhibit 17(e), on the next page). T. 45.

The northern, eastern and western sides of the playground will be enclosed by a black vinyl chain link fence. The vinyl coating reduces the visibility of the fence. A Trex sight-tight

³ This waiver applies only to the parking facility. No setback variance is required for the building itself. T. 59.



D PLAY SURFACE
NOT TO SCALE

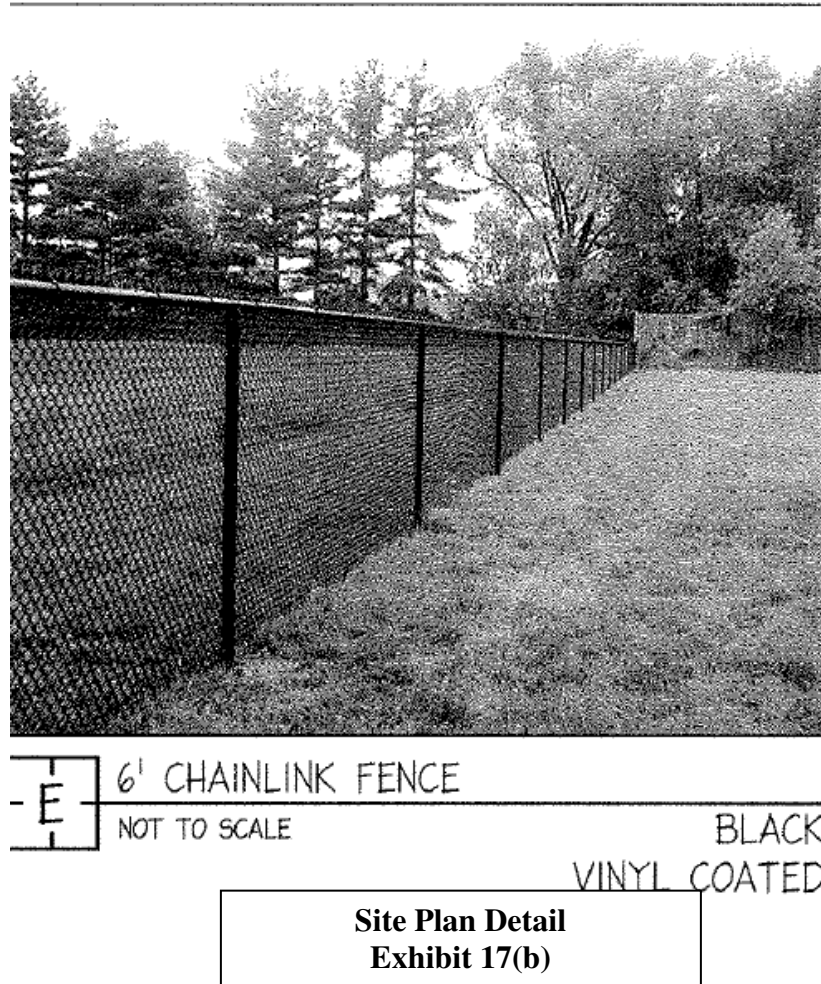
SYSTEM I
ENGINEERED WOOD FIBER

**Playground Materials and Equipment
Exhibit 17(e)**

fence will screen the playground from the Winter's property along the southern boundary. The fence is setback 13 feet from the property line. Examples of the sight tight fence and the black vinyl chain link fence, are shown on Petitioners' Exhibit 17(b), below and on the following page:



G SIGHT TIGHT FENCE
NOT TO SCALE



According to Ms. Bryant, the Trex sight tight fence has some sound attenuation qualities. T. 46. She submitted a report from Mr. George Spano, a senior consultant with Polysonics, an acoustics and technology consulting firm, concluding that noise levels at the property southern property line (with the Trex fence) will reach a peak of between 60 and 63 dBAs and average 60 dBAs. T. 52; Exhibit 47. This is discussed more fully in Section II.F.1 of this report.

The Petitioners' expert architect, Mr. Richard Washburn, testified that many of the existing exterior materials will be retained to enhance the residential appearance of the building. Petitioners submitted rendered elevations of the facility, shown on the next page. While the roof will have a higher pitch, the eave height will remain the same. Petitioners propose to add dormers to the roof to provide natural light and space for the classrooms. T. 142, 151. The



REAR ELEVATION



LEFT SIDE ELEVATION



RIGHT SIDE ELEVATION



FRONT ELEVATION

**Rendered Elevations
Exhibit 40**

existing front door, which is now on the left side of the front window, will be located on the right side and will serve as an exit door for a classroom. Petitioners propose to keep the exterior brick façade and will continue to use shutters around the windows.

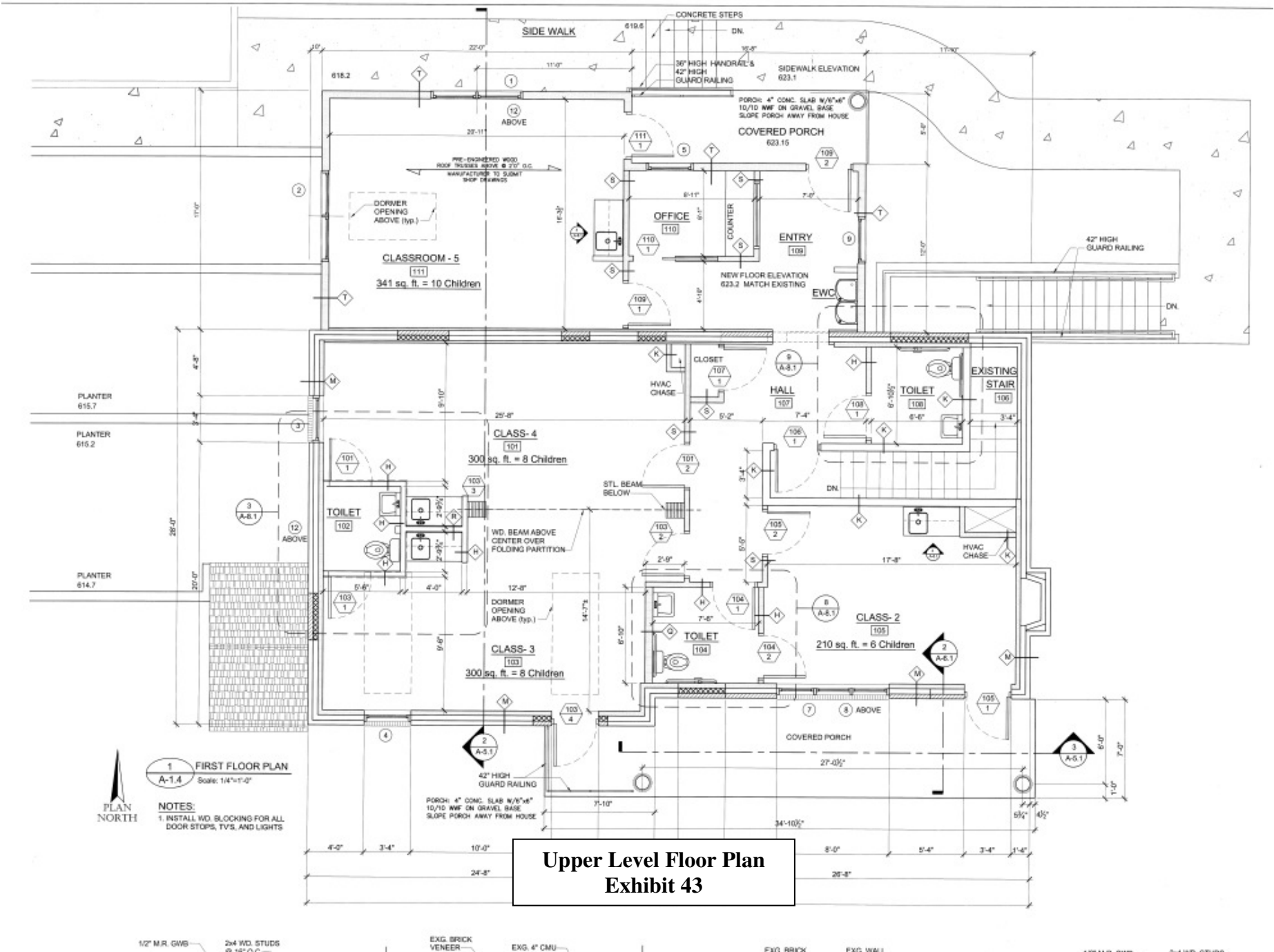
The addition is located on the rear (or east side) of the building. Mr. Washburn testified that he used a reverse gable roof to prevent the addition from being visible from the front of the property. There will be another entrance to rear of the building, and the addition will have hardy-board siding. T. 144. Mr. Washburn opined that the proposed building will be consistent with the residential character of the neighborhood. The addition will look like a bedroom or kitchen that has been added to the home. T. 145. From the front of the property along Frederick Road, the addition will not be visible. T. 146.

Few changes to the façade of the southern side are proposed. It will still have a chimney, shingle roof, and an eight-foot eave height. The overall height of the building will be 24 – 25 feet at the ridge. T. 143.

Mr. Washburn also described the floor plan of the modified structure. The building's interior will consist of a basement and first floor. The dormers are used to provide space and light; they are not a second story. T. 147.

The lower level has an ADA compliant entrance from the front (lower) parking lot where the handicapped space is located. It houses a classroom, utility spaces, a handicapped accessible bathroom, and a storage area. The storage area has high windows, and has not been designed for classroom space. T. 148. There is a second exit to the rear of the building and one to the play area. T. 148. An interior stairway leads to the upper level, which contains a small kitchen, office, restroom, and four classrooms. T. 149. Each classroom has an exterior exit, which is a code requirement. T. 150. Floor plans for each level (Exhibits 42 and 43), are shown on the next pages.





2. Operations

Ms. Vesper testified that the daycare will offer a full-time program for infants and children up to five years of age and a before and after care program for children between six and 12 years old. T. 190. It will operate between the hours of 6:30 a.m. to 6:30 p.m., Monday through Friday. Staff will arrive and depart 10-15 minutes before and after the operating hours. Ms. Vesper testified that there will be a maximum of 52 pupils and 6 staff members on site at one time. More than 52 students may be enrolled because some students are part time and two children may share one spot. T. 189. Staff and children will arrive and depart at staggered intervals. According to Petitioners' Statement of Operation, children will begin to depart between 4:00 p.m. and 5:30 p.m., by which time approximately 60% of the children will have left the facility. Exhibit 28(b), p. 5.

According to Ms. Vesper, two classes will be in the outdoor play area with a maximum number of 25 children at one time, although they generally average about 20 children. Children will be in the playground between the hours of 9:00 a.m. to 12:00 p.m. and 2:30 p.m. to 6:30 p.m. In cold weather, children are generally out for 15 minutes at a time, although on nice days they may be out for as much as 25 minutes. Two teachers are out on the play area with the children at all times. T. 197. They usually begin taking children out between 9:00 a.m. and 9:30 a.m. and they are usually back inside the daycare by 11:30 a.m. The center will typically have a "quiet time" between 12:30 p.m. and 2:30 p.m. They begin phasing the children back out to the playground at approximately 3:00 p.m. and stay there until 5:00 p.m. depending on weather conditions. T. 198.

Petitioners propose three special events during the year: a Christmas celebration, graduation, and possibly one for the school's anniversary. T. 190. The celebrations are held in the evenings and are done one class at a time with 15-minute breaks between; the facility will

close early the day of the celebration. The maximum number of children permitted in each class will be 15 students. The graduation is limited to 4-5 year olds. Therefore, other students will be vacating the building while the event begins. In her experience, the 15 parking spaces will be adequate for special events. T. 192-193.

The facility will be served by residential trash service; no dumpsters are proposed for the site. Exhibit 21(a), p. 7; T. 202. According to Ms. Vesper, no food will be delivered to the facility because the daycare only provides snacks to the children, which are purchased off-site. T. 201. The Petitioners' amended statement of operations provides that curriculum supplies will be delivered approximately 4 to 6 times a year because most of these are also purchased by the teachers off-site. Exhibit 21(a), p. 8.

3. Landscaping

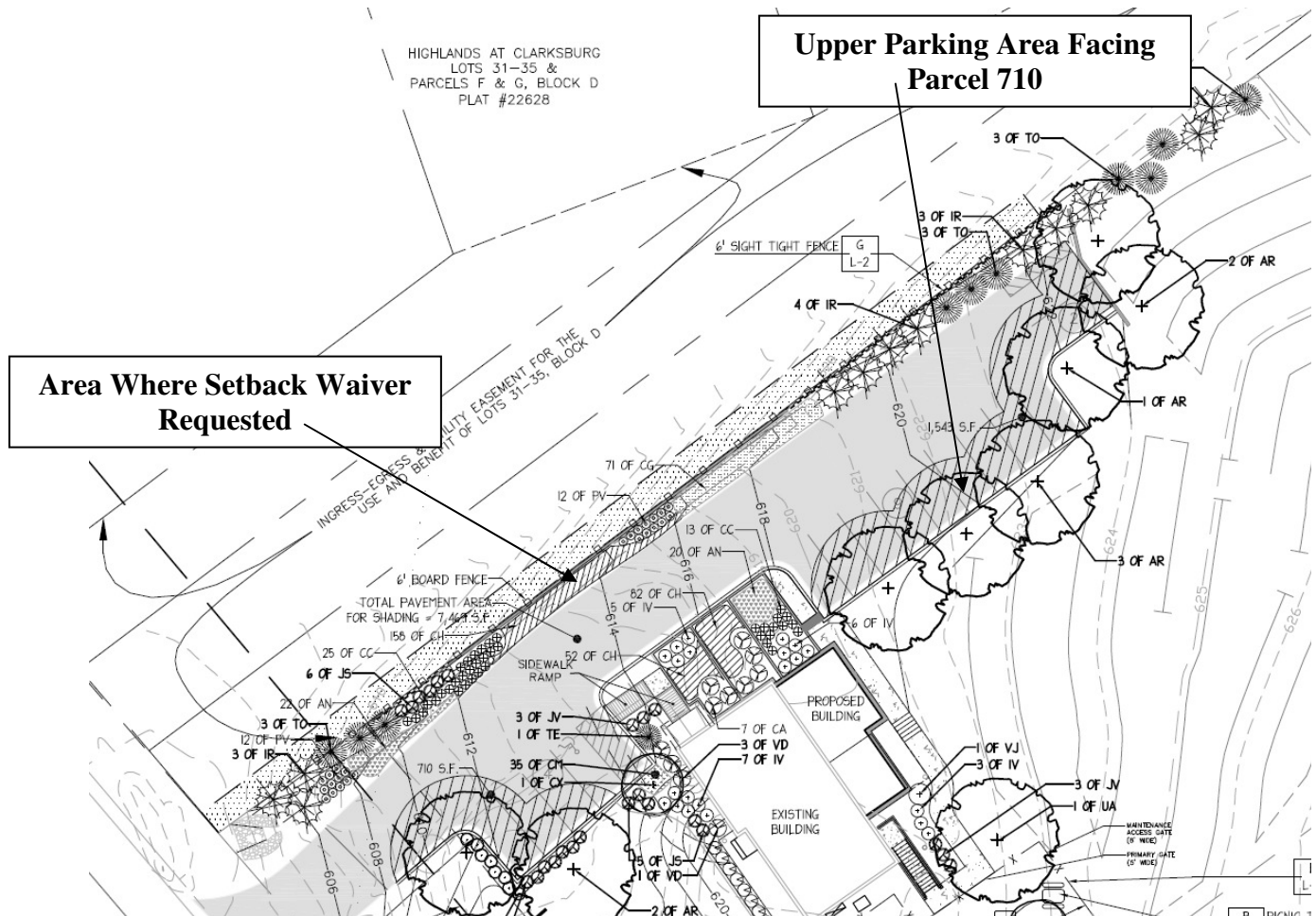
A rendered version of the site plan for the entire site (Exhibit 31) is reproduced below and a detailed version is shown on the following page.



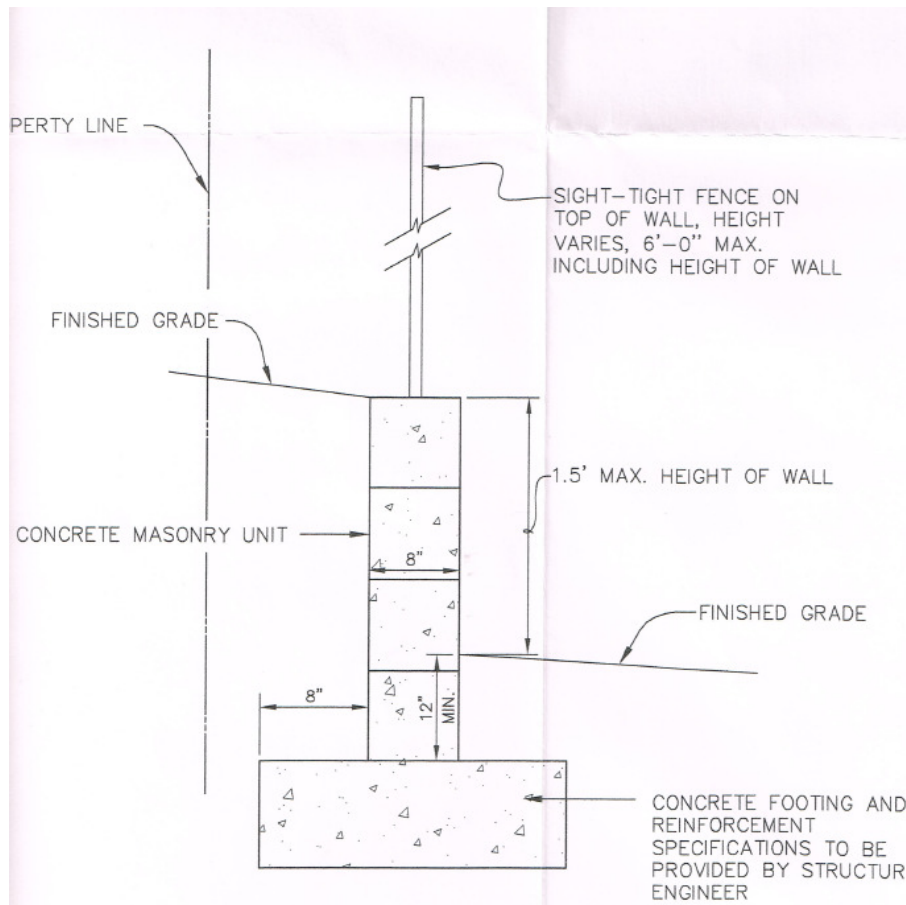


Landscaping in three areas was described in detail at the public hearing: (1) the northern property line where the setback waiver has been requested, (2) the southern boundary of the upper parking area, and (3) the southern property line adjacent Parcel 710. For ease of reference, larger details of these individual areas are also included here.

a. Northern side of parking facility: Ms. Bryant testified that the landscaping along the northern property line (shown below) is designed to shield the parking area from the adjacent single-family homes. T. 34. Landscaping here will include arborvitae, hollies, and low-growing shrubs. T. 39. A retaining wall and a 6-foot high sight tight fence provide additional screening along the property's northern border. T. 39. A detail of the retaining wall (Exhibit 17(c)) is shown on page 21.



Landscape Plan (Ex. 20) Excerpt Showing Parking Area



Retaining Wall Detail (Northern Edge of Parking Area)
Exhibit 17(c)

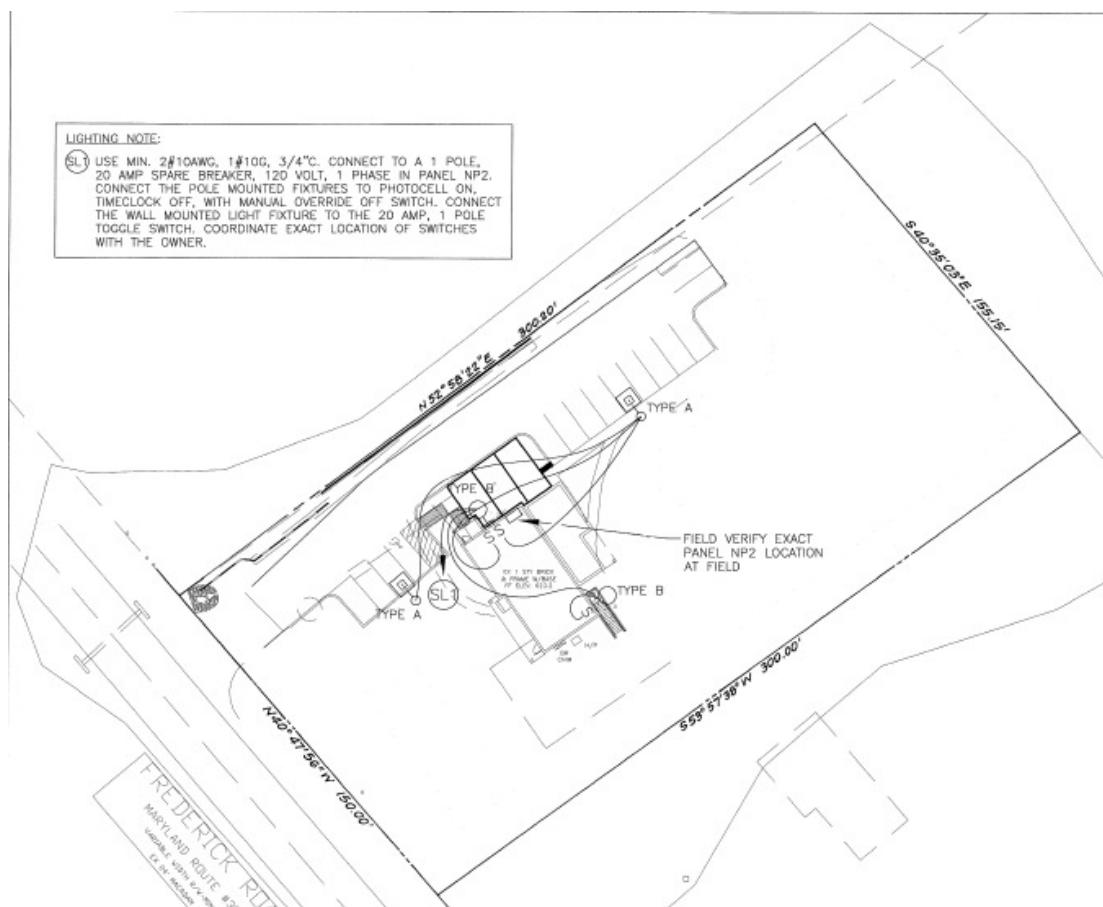
b. Landscaping on the southern edge of the upper parking area: Ms. Bryant also described the landscaping along the southern edge of the parking area. She stated that the upper parking area will be landscaped with shade trees (red maples) providing sufficient canopy to reduce the temperature of the parking lot. She also described the location of the parking area in relation to the Winter's property. The southern boundary of the parking area is 105 feet from the southern property line. There is an additional 30 feet between the property line and the Winter's home, for a total distance of 135 feet. The grade slopes approximately four to five feet down from the Winter's home to the parking area and is generally gradual but which steepens as it approaches the parking area. The existing grade will screen approximately one foot of the parked cars. There is sufficient room to permit an additional three-foot hedge or low wall on the

c. Landscaping along southern property line: A 6-foot high Trex sight-type fence, setback 13 feet from the property line, will screen the playground from the Winter's property along the southern boundary. In addition to the fence, the Petitioners are evergreen and shade trees. According to Ms. Bryant, the shade trees will eventually grow to approximately 50-60 feet and the evergreens will grow to between 10 and 15 feet. T. 93. The landscaping proposed between the outdoor play area and Parcel 710 is shown below (Exhibit 20(a)):



d. Lighting: According to Ms. Bryant, lighting for the daycare includes two 12-foot high poles with “shoebox” light fixtures, which is a square-shaped fixture at the top of the pole. One

of the pole lights is located in the lower parking area in front of the building and one is located in the upper parking area. In addition to the pole lights, there are two “type B” fixtures called “wall packs”, which are little square boxes that are located next to the entrances. Each of the fixtures are full cut-off fixtures, which directs the light downward rather than to the sides of the fixture. The lights will be turned off a few minutes after 6:30 p.m. each weekday when staff leaves. T. 62-64. The lighting plan is reproduced below (Exhibit 17(g)):



The Petitioners also submitted a photometric study of the proposed lighting. According to Ms. Bryant, the photometric plan (Exhibit 17(f)) shows that there will be no light spillage onto adjacent property; the study shows that there will be 0 foot candles at the property line and the

County standard requires a minimum of 0.1 foot candles there. T. 62-63.

4. Signage

Petitioners propose a single three- by five-foot sign, five feet in height, in front of the subject property. T. 54. Despite the Planning Board's recommendation that the size of the sign be reduced, Ms. Bryant opined that the sign is appropriate and residentially scaled for the property:

...we are dedicating approximately 30 feet of dedication to 355. And so that puts this sign about 60 feet back from the actual edge of the asphalt on 355. So we feel like it's actually perfectly scaled and won't actually be very large, considering the speed at which cars are driving by, and the distance from the road to the sign itself. And the engineer will talk a little bit more about the improvements to 355. But they're not any time in the near future. T. 55.

The location of the sign is shown on the excerpt from the site plan (Exhibit 18(b), on the following page) and a photograph a similar sign (from Petitioners' facility in Frederick County) is shown on a site plan detail (Exhibit 17(c)), on the same page.

At the public hearing, the Petitioners' expert in traffic engineering testified that the size of the sign was not necessary for traffic safety. When asked whether the larger sign would adversely impact traffic along Frederick Road, he replied:

Not in my opinion. What's going to happen is that since you have such a distance from where that sign is located, the driver is going to be pulling up far in front of that sign. So in terms of the sight triangle that driver is going to have, that's going to be well behind their field of vision when they're looking onto Frederick Road. So that sign is set so far back that it's not going to be an issue. T. 173-174.

He did not, however, state that the sign was necessary to make the entrance *safer* (i.e., it would enable those passing to identify the location more easily).



**Site Plan Excerpt Showing Sign
Location (Ex. 18(b))**



**Sign Detail
Exhibit 17(c)**

Technical Staff recommended approval of the petition, including both the waiver from the setback to the parking facility and the variance from the sign standards, subject to the following conditions:

1. The Child Care Center is limited to a maximum of 52 children and 6 employees on site at one time.
2. Hours of operation shall be limited to 6:30 a.m. to 6:30 p.m. Monday through Friday, 12 months a year.
3. All children drop-off and pick-ups shall occur on site.
4. The number of children playing outside in the play area at one time must not exceed 25.
5. The petitioners must obtain approval of a Preliminary Plan per Chapter 50 of Montgomery County Code. If changes to the site plan or other related plans are required at subdivision, the petitioners must file a copy of the revised site and related plans with the Board of Appeals.
6. The petitioners must obtain a sign permit for the proposed freestanding sign from the Department of Permitting Services (DPS). If DPS requires the requested variance, the petitioners must obtain a sign variance or adjust the design of the proposed sign to conform to all applicable regulations. A copy of the approved sign permit along with any revised drawing related to the sign must be submitted to the Board of Appeals before the sign is posted. Exhibit 19, p. 2

Staff recommended approval of the waiver of the setback for the parking facility for the following reason (Exhibit 19, p. 10):

In response to staff's comments, the applicants have revised the site and landscape plans. The revised plans generally are adequate in terms of layout, landscaping and lighting. Review of the applicants' revised landscape plan reveals that most of the issues and concerns raised have been addressed and deemed acceptable by staff.

Staff also recommended approval of the proposed sign (Exhibit 19, p. 11):

Staff finds the proposed sign to be appropriate and compatible with the neighborhood. The increased area is needed to give adequate identification to the proposed use so that it would be visible to drivers looking for the facility from the road. Any potential aesthetical adverse impact from the increased sign area will be minimized with the fact that the sign would be set back from the property line by more than double the required minimum 5-foot distance

The applicants must obtain a sign variance and a sign permit for the proposed free standing sign. A copy of the sign permit obtained from DPS must be submitted to the Board of Appeals before the sign is posted on the property.

The Planning Board recommended approval of the petition, but opined that additional evidence was needed to make certain of the required findings. Exhibit 27. Expressing concern that queuing of cars turning into and exiting the site could create delays or safety issues, the Board recommended that Petitioners submit a delay or queuing analysis to the Hearing Examiner. *Id.*, pp. 1-2. The Board also mentioned that Staff had been of the understanding that Petitioners would be monitoring traffic circulation within the site on a daily basis. When it understood that this would be implemented on an "as needed" basis, the Board reported that, "Staff maintained that it is imperative to implement the ... safety measures as part of the permanent and daily practice of the facility." *Id.*, p. 2. The Planning Board further recommended that the Petitioners submit additional information on the status of an approved special exception for the Avalon School, located immediately south of Mr. Winter's property, expressing concern that the traffic from the school would increase congestion on Frederick Road. Exhibit 27.

With regard to the waiver of the setback for the parking facility, the Board found that:

...because the adjacent houses sit lower than the proposed parking lot, the proposed retaining wall and evergreens will create an effective screen and serve the purposes of a typical parking lot setback. This conclusion was buttressed by recognizing that side setbacks are established with the general expectation that houses face the street and sit relatively close to their side lot lines. Here, the adjacent homes face the subject site and are separated from it by their front yards (which are fairly large), a shared driveway and a buffer strip. The board also recognized that the front orientation of the homes increases their exposure to the parking lot proposed on the subject site, but found that on balance, the distance and topography make the setback waiver acceptable. Exhibit 27, p. 4.

The Planning Board disagreed with Staff's conclusion that the proposed sign was compatible with the community, finding that the 15 square foot sign is "excessive in height and area" and out of character with the residential character of the neighborhood. Exhibit 27, p. 3.

Finally, the Board disagreed with Staff that there was sufficient information to determine that the use would not create objectionable noise due to the proximity of the play area to Parcel 710. It recommended that Petitioners (1) submit a noise study measuring the noise levels and (2) install a noise attenuation fence along the south side of the play area. *Id.*, p. 3. The Board the conditions of approval proposed by Staff as follows (Exhibit 27,.pp. 3-4):

1. The Child Care Center is limited to a maximum of 52 children and 6 employees on site at one time.
2. Hours of operation shall be limited to 6:30 a.m. and 6:30 p.m. Monday through Friday, 12 months a year.
3. All child drop-offs and pick-ups shall occur on site, except for the drop-off and pick-up of children by public transportation.
4. The petitioners shall make a good faith offer to the adjoining neighbors to plant additional trees in the easement between the proposed parking lot and the pipe-stem lots.
5. Activities in the outdoor play area must not commence before 9:00 a.m.
6. The petitioners shall install a six-foot-tall noise attenuation fence on the south side of the outdoor play area. The Applicants shall submit the details of the fence to staff prior to the conclusion of the public hearing.
7. The petitioners must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of Montgomery County Code [sic]. If changes to the site plan or other related plans required at subdivision, the petitioners must file a copy of the revised site and related plans with the Board of Appeals.
8. Before the Hearing Examiner's hearing in this matter or at a minimum before the record closes, the Applicants must propose a sign design that is smaller in area and height than the proposal reviewed by the Planning Board and its Staff, and more in keeping with the residential character of the neighborhood. If the sign and the special exception are approved, the Applicants must obtain a sign permit for the proposed freestanding sign from the Department of Permitting Services (DPS). If DPS requires a variance, the petitioners must obtain a sign variance or adjust the design of the proposed sign to conform to all applicable regulations. A copy of the approved sign permit, along with any revised drawing related to the sign, must be submitted to the Board of Appeals before the sign is posted.

D. Community Response

Mr. and Mrs. Philip Winter appeared in opposition to the petition. They expressed concerns regarding the impact of noise from the playground on their daughter's property (Parcel 710). Mrs. Winter is not sure that the 6-foot fence will be sufficient to address noise issues. T. 211. Both she and her daughter live on a high ridge. In her experience, she can hear sounds from as far as a mile away that are generated in lower areas, such as a football game at Clarksburg High School. T. 214.

Mrs. Winter testified that she had lived on the property all of her life and there were quite a few traffic accidents where her driveway intersects with Frederick Road. She stated that there are frequently traffic backups at that location during rush hour, especially if an accident has blocked traffic on I-270. T. 214-270.

Mr. Winter, a real estate appraiser by profession (T. 221), testified he is primarily concerned about the impact on the value of his daughter's property (i.e., Parcel 710), but was unsure whether the proposed daycare "effects the value of the property adversely or not." T. 223.

Mr. Winter echoed his wife's concerns about traffic. He testified that his daughter works at the Pentagon and her husband works in Annapolis and both have to turn right onto Frederick Road on their way to work between 7:00 a.m. and 8:00 a.m. in the morning. They then take Springtown Road to I-270. He thinks, however, that this may have more to do with the buses from the high school. T. 220. Mr. Winter was also concerned about the possibility that the Avalon School would move forward—it is located immediately south of his property. T. 101.

His son-in-law is an engineer in sound communication and asked Mr. Winter to get answers to several questions on the expert's sound report. His daughter is convinced that this will affect the value of her property. T. 221. He is a professional appraiser and he is unsure whether it will devalue her property or not. He believes that the use is legitimate. T. 223. He is

skeptical of zoning because of Clarksburg's checkered past. He assumed the whole property would be fenced, although not having the fence is not a "big thing" to him. He does want adequate buffers and wants to make sure that the leach field will not encroach onto his property or his daughter's property. T. 223-224.

E. The Master Plan

The subject property is within the area covered by the *1994 Clarksburg Master Plan and Hyattstown Special Study Area* (Master Plan or Plan). Technical Staff advises the Plan confirmed the R-200 zoning for the property, but did not contain specific recommendations for the subject property. Staff advises that the Plan stressed the need for daycare facilities due to the planned population growth in Clarksburg, and states that "child care should be dispersed throughout the study area with concentrations near transit, employment areas, and concentration of housing." Exhibit 19, p. 5 (quoting page 167 of the Plan). Staff found the petition consistent with the Plan because it fulfilled this identified need. *Id.*

The Hearing Examiner finds the proposed use consistent with the Master Plan for this and one additional reason. The Land Use Plan includes the subject property within the Transit Corridor District. The Plan's describes this District as follows (*Plan*, p. 54):

The Transit Corridor District includes properties fronting MD 355 which have developed over many decades in accord with traditional patterns found elsewhere in the "Up-County": single-family detached lots fronting the road. The most significant planning challenge here is to maintain and continue this residential character while addressing the need for increased traffic capacity along MD 355.

The Plan articulates the following objectives for the Transit Corridor District (*Plan*, p. 56):

- **Continue the present residential character along MD 355.**

The predominant pattern of development along MD 355 in this district is residential, with a majority of the homes fronting MD 355. To help reinforce the existing residential character along MD 355, this Plan recommends densities ranging from two to four units per acre.

Because the Hearing Examiner finds that the proposed use does not alter the existing residential character of the neighborhood (with the exception of the proposed sign) and because it fulfills a need identified in the Plan, she agrees with Technical Staff and the Planning Board that the petition is consistent with the Plan.

F. Traffic Impacts

1. Access and On-Site Circulation

The Petitioners' expert in traffic engineering, Mr. Carl Wilson, described the site circulation of the proposed use. T. 163. Teachers will park at the rear of the parking lot; spaces closer to the building will be used for parent drop-off and pick-up. The driveway will be two lanes, one lane in and one out. There is sufficient throat area in the driveway to provide storage for two vehicles waiting to exit the property at the same time. T. 163. Widening of the existing driveway will be on the south and an east side of the existing drive, as it is as close to the northern property line as it can be. T. 164.

a. Delay/Gap Study

Mr. Wilson testified that his firm had traffic analysis recommended by the Planning Board. He stated that vehicles entering and exiting the driveway from both directions will have adequate time to make a left-hand turn. T. 165. To determine this, he performed an analysis utilizing the methodology in the Highway Capacity Manual, which examines the delay times in the operation of an intersection, rather than simply measuring critical movements. They assumed conservatively that 75% of the traffic would enter the site from the north. Their study indicated that the morning southbound traffic will have a delay time of 8 seconds, or Level of Service A. Left turns exiting the site in the morning will experience a 13.1 second delay. In the evenings, he found that left turns into the site would experience a 10.9 second delay, or Level of Service B. Based on his study, left turns exiting the site will experience a 24-second delay, or

Level of Service C. All of these levels of service are acceptable. In his opinion, the available storage at the driveway throat is adequate because there will only be 14 trips leaving during the peak hour. There is sufficient space to permit cars to back out and stack further toward the rear of the parking area as well. T. 165-167.

Mr. Wilson also testified that his firm prepared a gap study at the request of the Planning Board. To prepare the gap study, his firm videotaped traffic along Frederick Road during the morning and evening peak hours. Software applied to the video can measure the actual time between cars as they pass the property. The "gap" is the amount of time between cars passing through the intersection of Frederick Road and the driveway. AASHTO, or the American Association of Safe Highway Transportation Officials, sets the standards for the gap times which should be available to different roads. For a left turn from a minor street, which is the driveway entrance, the gap must be 7 seconds. For a right turn, a gap of 6 ½ seconds is required. A left turn from a major road requires 5 ½ seconds. These gaps apply regardless of the speed limit. T. 168-170.

Their study found the smallest number of gaps occurred in the left turn movement exiting the site in the morning peak hour. During this time, there were 52 gaps available to cars making a left turn from the driveway onto Frederick Road. As there will be only 14 trips exiting the site during the peak period, 52 gaps are sufficient to accommodate this movement. Some of the gaps are as large as 16 to 18 seconds, which may permit more than one car to exit during a single gap. This result is consistent with the HCM analysis performed for the site, which indicates that delays will be minimal. T. 170-171.

In addition to the gap study, Mr. Wilson's firm pulled crash data available from the State Highway Administration. According to Mr. Wilson, the accident activity at this location is minimal. These records are kept only for accidents where the car is not drivable from the scene

or there is personal injury. He stated that there is no way to obtain records tracking fender benders. T. 171-172. Mr. Wilson testified that even though the gap study had been based on traffic from a single weekday, the results were consistent with other data, including SHA volume counts and a speed study that was performed. The delays shown in the HCM analysis were also consistent with both the gap study and the SHA volume counts. T. 182-183.

b. Site Distance

In addition to adding width to the driveway, the Petitioners propose to raise the driveway by three inches in order to ensure adequate sight distance along Frederick Road. SHA requires a minimum sight distance of 325 feet. Currently, there is a vertical curve along Frederick Road that restricts sight distance to 315 feet. The additional height of the driveway will add 10 feet to the existing sight distance, thus meeting SHA standards. T. 164. Technical Staff reviewed the site distance analysis submitted and "found that the sight distance on MD 355 is met when looking both sides from the site." Exhibit 19, p. 35.

2. Local Area Transportation Review/Transportation Policy Area Review

Because this property still requires preliminary plan approval, the Planning Board will make the determination that public transportation facilities will be adequate. Nevertheless, Petitioners presented testimony that the petition is able to meet the current test for adequate public facilities. Mr. Wilson testified that the former Policy Area Mobility Review test has been replaced by a Transportation Policy Area Review (TPAR) test. According to Mr. Wilson, the TPAR still divides the County into policy areas, and the subject property is in the Clarksburg Policy Area. T. 158. Under the new policy, there is sufficient capacity in the Clarksburg Policy Area to accommodate the use, although this will be reviewed again during preliminary plan approval. T. 160. The new test requires review of both highway and transit capacity. Available transit capacity is measured by the amount of time between bus trips. This area is considered

mostly rural and the transit capacity here is not sufficient. As a result, according to Mr. Wilson, the Planning Board and MCDOT are working on a mitigation program to permit projects to proceed by paying a fee at preliminary plan approval. T. 160-161.

According to Mr. Wilson, Local Area Transportation Review (LATR) still applies under the new adequate public facilities test. He opined that the daycare facility will generate 28 peak hour trips in the morning and the evening. As this is less than the 30 trips necessary to trigger the requirement for a traffic study, he submitted a "transportation statement" to Technical Staff. T. 159. He found that half of the trips will be entering the facility and half will be leaving the facility during the peak hours, which is consistent with parent drop-off and pick-up. T. 159. These numbers are based on a student enrollment of 52 and six teachers employed at the facility. T. 160. Technical Staff reviewed the traffic statement and agreed with its findings. T. 162; Exhibit 19.

Technical Staff provided the following comment on the adequacy of transportation facilities:

The site is located in the Clarksburg Policy Area where there is a 10 percent Policy Area Mobility Review (PAMR) trip mitigation requirement according to the County's Growth Policy. The current PAMR requirement and the new proposed Transportation Policy Area Review (TPAR) is to be discussed and approved by the County Council in the next several months. The applicants must address either the current PAMR requirement or the new TPAR requirement.

Ms. Bryant testified that she researched the status of the special exception approved for the Avalon. She stated that the school would have been large, having been approved for a total of 283 children and 41 staff members. T. 70. She spoke with Katherine Freeman of the Board of Appeals, who informed her that the special exception had expired in October, 2011, and no extension had been requested. Nor did she find any record of a building permit for the school. T. 70-71.

G. Environmental Impacts

1. Noise

In response to the Planning Board's recommendation that Petitioners provide additional evidence on the impact of noise levels from the outdoor play area, the Petitioners submitted a sound study performed by Mr. George Spano, a senior consultant with Polysonics, an acoustics and technology consulting firm. Exhibit 47. Mr. Spano stated that the firm conducted "precision sound surveys" at the Petitioners' existing facility in Adamstown Maryland and at the subject property. Specifically, the study evaluated sound propagation from the outdoor play area at Petitioners' Adamstown outdoor play area, which enclosed with a chain link fence with no noise attenuation properties. Exhibit 47, p. 1. Mr. Spano's firm also performed tests of the ambient noise levels at the subject property, and then applied the propagated noise from the Adamstown facility to the ambient noise at the subject property. *Id.*

The study reported that the noise levels of 25 children the Adamstown outdoor play area measured 13 feet from the chain link fence averaged between 60 and 63 dBA, with the sound mostly within the 60- to 65-dBA range. The study states that, occasionally, noise levels reached 70 dBA, primarily when several girls screamed at the same time.

The study also compared ambient noise levels at both facilities. At the Adamstown daycare, cars generated noise levels of between 50-60 dBA and trains running approximately every 20 minutes generated noise levels of 75 dBA. The road is approximately 20 feet from the play area with a speed limit of 25 miles per hour. The train ran a "few hundred" feet away. The study reported that a neighbor lives approximately 50 feet from the facility and there have been no sound issues at that location. *Id.*

Ambient noise levels at the subject property are generated by traffic on Frederick Road, which is approximately 100 feet from the play area. Noise levels equaled 50 dBA, except when a truck passed at which time it increased 65 dBA.

The Polysonics study also states that the Trex fence has a sound rating of "Sound Transmission Class 19 or -19 dBAs". This will result in a sound reduction of approximately 5 – 10 dBAs at the subject property. According to the report, use of the Trex fence along the southern property line will reduce maximum sound levels to 65 dBA and average sound levels to 60 dBA or less. Exhibit 47, p. 2.

The Winters testified that their son-in-law, Mr. Andy Roy, is a sound engineer. T. 221. Via e-mail, Mr. Roy posited several questions on Mr. Spano's report (Exhibit 50(a)):

1. How many recording locations at the existing site were surveyed to ensure results were not skewed by different propagation paths?
2. What is the approximate spectral composition of the measured noise from the existing nursery?
3. Was the sound intensity level measured the peak value, or an average (and if so, how was it weighted)?
4. Were there any adjacent barriers providing signal reflections at the surveyed site, and what is the estimate of the adjacent walls for the proposed location?
5. What mechanism is providing the estimated signal attenuation from the proposed fence (absorption, reflection, etc)?
6. What is the anticipated attenuation of the noise by the proposed tree types and placement?

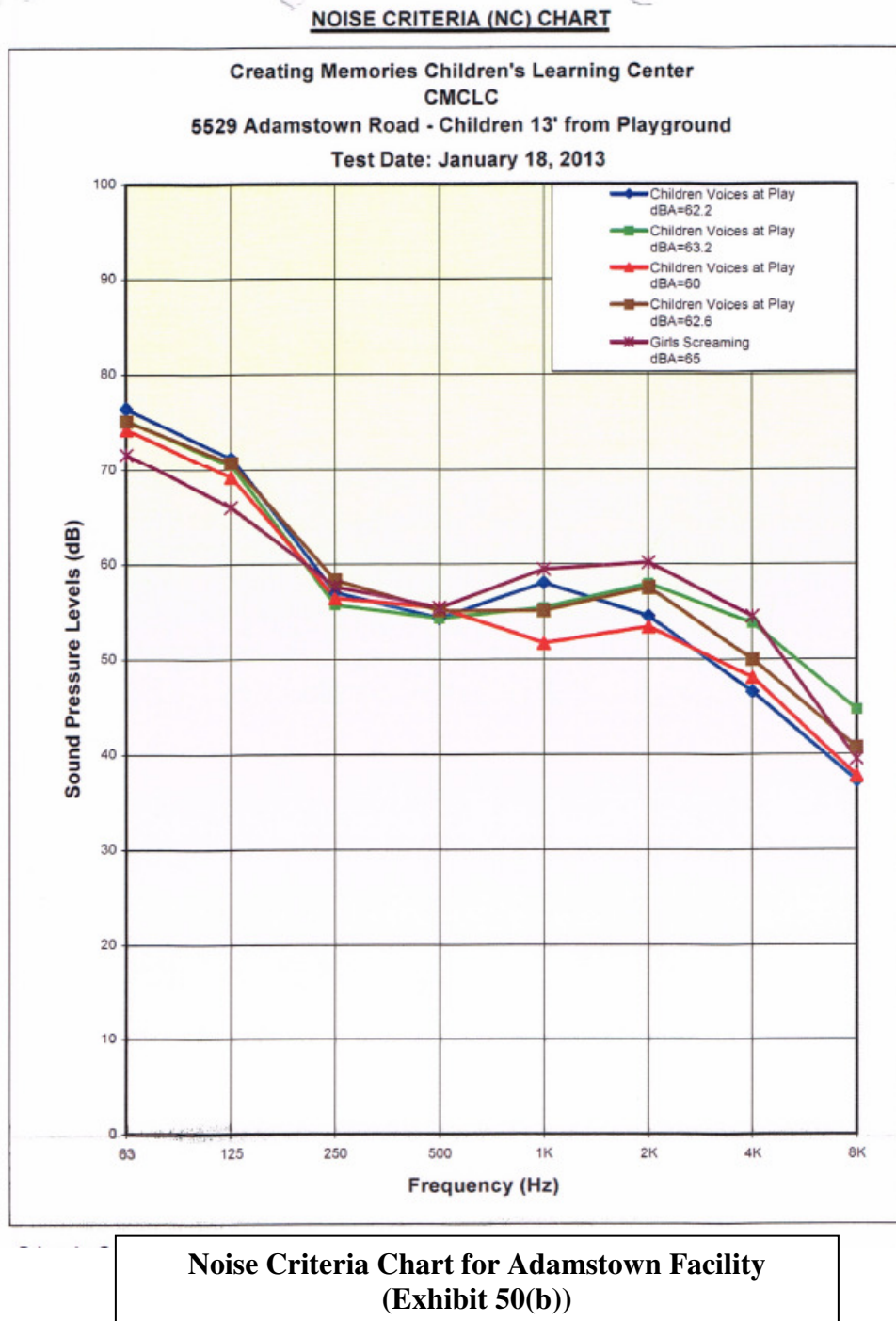
Polysonics submitted a supplement report responding to these questions and providing two charts, one showing sound measurements of truck and automobile traffic at the subject site and the second summarizing the noise levels of children at play at the Adamstown facility. Exhibit 50(b).

With regard to the subject property, the supplement report states that the test shows two curves of noise from "routine" car traffic on Frederick Road measured from the play ground area and a 5-second sample of a medium delivery truck passing, which occurs about every minute during the day. Using a slow meter response (a 1 second average), the maximum dBA of the truck traffic was measured at 65 dBA. Automobile traffic was measured over a 30-second interval. Exhibit 59(b), p. 1.

With regard to the Adamstown facility, the supplemental report advised that the children's voices were largely "omnidirectional" and therefore, do not exhibit a directional pattern. The chart submitted for the Adamstown facility has five curves indicating that the noise levels were fairly constant at between 60-63 dBA. Tests were not done past the pine trees at the Adamstown site, so these were not factored into the test results. Mr. Spano reported that his firm had performed similar tests for other clients and the results were consistent with these other findings. Exhibit 50(b), p. 2. The chart summarizing the sound tests performed at the Adamstown property is reproduced on the following page.

The report also explained the method of calculating the sound attenuation impact of the Trex fence (*Id.*, p. 2.):

The noise attenuation of the solid Trex fence proposed for the Clarksburg location is calculated by using a diffraction formula with the girl's voice at 4' above the ground and the listener at 5' about the ground with the intervening fence at 6' high. Since the screaming girls voices are primarily in the 1kiloHertz to 4 kilohertz frequency range, the reduction in level due to diffraction is calculated to be at least 5dB at 1 kHz and 10dB at 4kHz. We have typically observed and measured barriers that block the line of sight in the voice frequencies and they provide at least 5 dBA of reduction. We also noted that the Trex fence is good at noise reduction and is sound tested at 19 Sound Transmission Class.



2. Water Quality Plan

As noted, the property is within a special protection area designated by the Clarksburg Master Plan. Mr. Stephen Crum, Petitioners' expert in civil engineering, explained the purpose of the special protection areas. These were established to protect areas with high quality streams. Instead of submitting a stormwater management concept plan, the Petitioners are required to

submit a water quality plan (Exhibit 11(a)). These are reviewed by various County agencies, including the Planning Board. The Petitioners have submitted a water quality plan, which was approved by the Planning Board for those matters within their jurisdiction. Exhibit 27; T. 116-118. DPS has approved the preliminary water quality plan for matters within its jurisdiction as well. T. 120.

In a report dated November 29, 2012, Technical Staff recommended approval of those matters within the Planning Board's jurisdiction over water quality plans with two conditions (Exhibit 38):

- Conformance to the conditions as stated in the Montgomery County Department of Permitting Services (DPS) Preliminary/Final water quality plan approval letter dated June 4, 2012 (Attachment A).
- The impervious surfaces on the subject property are limited to no more than 22.6 percent within the SPA as shown on the Impervious Surface Plan Portion of the Preliminary/Final Water Quality Plan.

The Planning Board's recommendation on the special exception notes that it approved Petitioners' water quality plan at the same hearing. Exhibit 27. At the public hearing on the special exception, Mr. Crum testified that the impervious area shown on the site plan was limited to 22.6% of the total area. T. 86.

H. Other Public Facilities and Septic System

Mr. Crum testified that utilities on the site include public water, electricity and telephone. The property is not served by public sewer. Mr. Crum testified that the property will not be served by public sewer. The public sewer line runs behind the dwellings north of the pipestem driveways. In order to reach the subject property, Petitioners would have to obtain an easement from the property owners of those lots and install a fairly sizeable extension. In addition, the extension would have to be pressurized, which the WSSC does not favor. T. 112.

Mr. Crum stated that he researched the WSSC records, which listed the property's sewer category as S-0, which does not exist. He believes that the category is actually S-6. T. 113. There is an existing septic system in the front of the property which is not sufficient to serve the daycare. It consists of two seepage pits, the methodology used in the 1960's. In order to serve the daycare, the Petitioners propose to locate a new septic field in the rear (southeastern portion) of the property, eliminate the seepage pits in front and install a new septic tank and pump chamber there. Effluent will then be pumped to the fields in the rear for treatment. T. 114. The rear field contains trenches which are approximately two feet wide and four feet high filled with aggregate and perforated pipe. Montgomery County has issued a permit to the Petitioners to install the new system that remains valid. T. 116. The septic field on the plan is large because the County requires installation of replacement trenches. T. 116.

The relatively large area of the lot needed for the septic field dictates the location of the outdoor play area on the property. The play area may not be over the septic field because the County does not permit grading over the septic areas. In addition, the play equipment is anchored on foundations, which are also not permitted in septic fields. T. 116-117.

III. SUMMARY OF THE HEARING

The testimony adduced at the public hearing is set forth in this report at relevant points. A complete summary of the testimony is included in an appendix to this report, which is attached hereto and incorporated herein.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the

Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Zoning Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioners comply with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Zoning Ordinance § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “*the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.*” § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “*physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.*” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a child day care use. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must

be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

In this case, the Technical Staff suggested the following inherent characteristics associated with the child daycare use) based on prior determinations made by this office (Exhibit 19, pp. 12-13):

- (1) buildings and related outdoor child care equipment;
- (2) parking areas;
- (3) lighting;
- (4) noise generated by children;
- (5) drop-off and pick-up areas;
- (6) outdoor play areas;
- (7) long hours of operation;
- (8) employees of the child care facility.

In addition to those inherent characteristics listed by Staff, this office has included vehicular trips to and from the site by parents and employees and (possibly) commercial trash pick-up.

Technical Staff determined that the waiver of setbacks for the driveway and parking facility is a non-inherent impact of the proposed use, but found that (Exhibit 19, p. 13):

...any adverse effect that might have been created has been mitigated by distance, additional screening and buffering provided by the proposal and the abutting unbuildable pipe-stem driveways that are improved with common driveways with egress and egress easements. In recommending that the intent of the waiver from the parking facility standards...staff finds that the intent of the setback requirement is met.

The Petitioners disagree that the setback waiver is a non-inherent impact of a daycare facility. Ms. Bryant testified that the landscaping and sight tight fence more than adequately screen the parking facility from the adjacent properties, especially considering that the homes are approximately 75 feet from the property line. T. 29, 58.

The Hearing Examiner agrees with Technical Staff that the parking waiver is a non-inherent impact of the use, but finds that the impact has been satisfactorily mitigated by the

landscaping proposed, change in grade, and the distance of the dwellings to the northern property line. As a result, the Hearing Examiner finds, as did Technical Staff, that this non-inherent impact does not warrant denial of the petition.

After carefully reviewing the entire record, the Hearing Examiner finds that Petitioners have provided adequate evidence, including a noise study and delay/gap analysis, to make the requisite findings in this case. She recommends approval of the petition subject to the conditions set forth in Section V. of this Report, with the exception of the proposed sign for the property.

B. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioners' documentary evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21. General conditions:

(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

Conclusion: Child day care facilities are permitted by special exception in the R-200 Zone pursuant to Zoning Ordinance §59-C-1.31(d).

(2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use would comply with the standards and requirements set forth for in Zoning Ordinance §59-G- 2.13.1, as detailed in Part IV. D of this report.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject site is located within the area covered by the *1994 Clarksburg Master Plan and Hyattstown Special Study Area*. As discussed earlier, because the Hearing Examiner finds that the proposed use (with exception of the sign) maintains the residential character of the neighborhood and daycare facilities are identified as a need in the Plan, the Hearing Examiner finds that this petition is consistent with Plan.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses. The Board or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: Technical Staff concluded that the proposed daycare would be in harmony with the general character of the neighborhood because traffic will not be a significant impact on the residential neighborhood or the roads and adequate off-street parking is provided. Exhibit 19, p. 15.

The Hearing Examiner agrees with Technical Staff's conclusions, but for somewhat different reasons. She finds that the exterior modifications to the existing house do much to retain the property's existing residential scale. Locating the addition to the rear of the existing single family dwelling, so that its roof is not directly visible from the front, reduces the visual

impact of the expansion. While vehicular access was a significant issue before the Planning Board, the Petitioners have submitted the additional traffic information and expert testimony (i.e., the delay gap study and HCM analysis) requested by the Planning Board. This evidence demonstrates that employees and parents dropping and picking up children will be able to circulate safely in the parking area because of the available stacking and projected peak hour trips. In addition, the gap study demonstrates that there is sufficient time for vehicles to enter and exit the site without extensive queuing.

The Planning Board indicated the need for Petitioners to monitor on-site circulation at all times. The Board, however, did not have the benefit of the additional studies and information provided by the Petitioners' traffic expert. Based on the latter information, the Hearing Examiner finds that there is no need to provide full-time monitoring of site circulation; rather, the Petitioners may monitor traffic circulation on an as-needed basis as proposed.

At the Planning Board's request, the Petitioners did provide information that the special exception for the Avalon School has expired and therefore, will not increase traffic on Frederick Road near the site. Having no evidence to the contrary, the Hearing Examiner finds that vehicles from the school will not worsen traffic activity surrounding the property.

The Hearing Examiner agrees with the Planning Board, however, that the size of the proposed sign is excessive and far above the sign area permitted in residential zones, even with the setback from the street. The Petitioners' expert traffic engineer testified that the size of the sign is not necessary for safety reasons because it is setback so far from the road. As a result, the Hearing Examiner does not recommend approval of the sign as approved even subject to the requirement to obtain a variance. Should the Petitioners desire an identification sign, they may request a modification of the special exception and propose a smaller sign or install a sign meeting residential standards at the location shown on the site plan.

Based on this evidence, the Hearing Examiner finds that the daycare facility proposed meets this standard, with the exception of the proposed sign.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff concluded that the facility would not be detrimental to other properties because trip generation and intersection capacity were within acceptable limits, landscaping adequately screened the use, and “efficient on and near site circulation patterns” provided adequate buffering from adjoining properties and the roads. Exhibit 19, p. 15. While the Planning Board recommended approval of the petition, it did not feel there was evidence to determine whether noise levels from children in the outdoor play area would meet residential noise standards and thus negatively impact the peaceful enjoyment of Parcel 710. To address this concern, the Petitioners submitted a noise study demonstrating that with the installation of a Trex sight tight fence, noise levels would average 60 dBAs or less with a maximum noise level of 65 dBAs, meeting the County's residential noise levels.

The Hearing Examiner finds persuasive the Petitioners' noise study, and the sound consulting firm's supplemental report, which are the only technical evidence on the matter in the record. As the noise study demonstrates that noise levels will meet County residential standards and on average will fall below those levels, the Hearing Examiner finds that daycare facility will not adversely impact the peaceful enjoyment of those inhabiting Parcel 710. While Petitioner did not propose any outdoor amplified sounds, there is nothing in the record explicitly prohibiting them. As a result, the Hearing Examiner recommends a condition specifically prohibiting amplified noise, which is typical in other special exceptions for daycare facilities. In addition, the Hearing Examiner endorses the condition recommended by Technical Staff and the Planning Board limiting the

number of children that may be in the play area at one time and limiting the times they may use the outdoor play area.

Both Technical Staff and the Planning Board found that the waiver of the setback for the parking facility would not negatively impact the neighbors to the north of the property. The Planning Board found that because "the adjacent houses sit lower than the proposed parking lot, the proposed retaining wall and evergreens will create an effective screen and serve the purposes of a typical parking lot setback." The Board also noted that the side setbacks usually relate to the side yards of both houses; here, the houses to the north face the pipestem driveways and are separated from the parking facility by "fairly large" yards, the shared driveway, and a buffer strip. Exhibit 27, p. 2. While finding the setback waiver acceptable, it recommended the following condition of approval:

The petitioners shall make a good faith offer to the adjoining neighbors to plant additional trees in the easement between the proposed parking lot and the pipestem lots.

With regard to the parking facility waiver, the Hearing Examiner agrees with both the Planning Board and Technical Staff that the landscaping proposed on the northern property line sufficiently screens the parking facility from the homes to the north. Because of the orientation of those homes (with large yards facing the property's northern boundary) and the level of landscaping, this area may have more buffering than situations in which no setback waiver is required.

The Hearing Examiner does not find it necessary to impose a condition requiring the Petitioners to make a good faith offer to the adjoining neighbors to plant additional trees on property not owned by the Petitioners. The Hearing Examiner has no evidence in the record, other than the Planning Board's conclusion, that this would be possible, desirable or necessary. As a result, she does not recommend including this as a condition of approval.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: For the reasons set forth above, the Hearing Examiner finds that the use will not generate noise above County residential noise levels. The Petitioners' photometric study demonstrates there will be no light spillage onto adjoining residential properties and Ms. Vesper testified that lights will be turned off manually in the morning and evening when staff open and close the facility.

Ms. Bryant testified that the southern border of the upper parking area is approximately 135 feet from the dwelling on Parcel 710. According to her, the existing grade would shield approximately one foot of each parked car from the dwelling. She stated that there is sufficient room to plant a 3-foot high evergreen hedge along the southern portion of the upper parking lot to provide further screening from car headlights. While there is nothing in the record indicating that car headlights will extend the 135 feet from the upper parking area to the dwelling, this possibility has not been definitively excluded. As a result, the Hearing Examiner finds that planting of an evergreen hedge or low wall along the southern border of the parking area is appropriate to ensure that this does not happen and recommends a condition to this effect, set forth in Section V of this Report.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: Technical Staff found that the proposed use will not increase the intensity of special exceptions to an extent that they would change the residential character of the

neighborhood. Staff noted that there are two special exceptions within the neighborhood: a 5-acre horticultural nursery and commercial green house approved in 1976 and "S-2685, a Private Educational Institution approved in 2007 but has not yet been constructed."

Mr. Winter testified that the latter special exception was for a private school known as the Avalon School and would have been located adjacent to his southern boundary line. T. 101. Ms. Bryant testified that the school would have been large, approved for 283 children with 163 daycare, 120 school-age children, and 41 staff. T. 70. At the Planning Board's request, Ms. Bryant researched the status of the special exception and found that it had expired in October, 2011 without an extension request. Nor did she find any record of a building permit for the school. T. 70-71.

Based on this evidence, the Hearing Examiner finds that the only two special exceptions in the surrounding area are the horticultural nursery and greenhouse and this proposed daycare. As a result, she concludes that approval of this special exception will not change the existing single-family detached character of the neighborhood.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence summarized above supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board*

must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.

- (B) *If the special exception does not require approval of a preliminary plan of subdivision, by the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The subject property does require subdivision; therefore, the Planning Board will make the determination whether public facilities are adequate at the time of preliminary plan review. Nevertheless, the Petitioners did submit evidence that the petition would be able to meet the requirements of both LATR and TPAP, as described in Section II.F.2 of this Report. For these reasons, the Hearing Examiner finds that this standard has been met.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Technical Staff found that “[t]he proposed access point and on-site vehicular and pedestrian circulation system shown on the site plan are adequate”, focusing primarily on the site distance evaluation criteria. Exhibit 19, p. 17. Site access was of significant concern, however, to the Planning Board who recommended submission of a delay or queuing study to determine the impact of the use on Frederick Road and whether site circulation was safe. Exhibit 27. The results of the study have been previously described and the Hearing Examiner finds that, based on this evidence, the proposed facility will not reduce the safety of vehicular traffic on the public roads.

C. Specific Standards: Child Day Care Facility

The specific standards for a child day care facility are found in Code § 59-G-2.13.1. The Technical Staff report and the evidence of record in this case provide sufficient evidence that the proposed child day care facility use would be consistent with these specific standards, as outlined below.

Sec. 59-G-2.13.1. Child day care facility.

(a) *The Hearing Examiner may approve a child day care facility for a maximum of 30 children if:*

(1) *a plan is submitted showing the location of all buildings and structures, parking spaces, driveways, loading and unloading areas, play areas and other uses on the site;*⁴

Conclusion: A site plan (Exhibit 18(b)) has been submitted showing buildings and other facilities, as required.

(2) *parking is provided in accordance with the Parking Regulations of Article 59-E.*

The number of parking spaces may be reduced by the Hearing Examiner if the applicant demonstrates that the full number of spaces required in Section 59-E-3.7 is not necessary because:

(A) *existing parking spaces are available on adjacent property or on the street abutting the site that will satisfy the number of spaces required; or*

(B) *a reduced number of spaces would be sufficient to accommodate the proposed use without adversely affecting the surrounding area or creating safety problems;*

Conclusion: Zoning Ordinance §59-E-3.7 requires, “For a child day care center, one space for every non-resident staff member in addition to the residential parking requirement if applicable and adequate parking for discharge and pick up of children. In this instance, the average drop off and pick up space required is one space for every six children.” There are no resident staff, therefore,

⁴ Section 59-G-2.13.1(b) of the Zoning Ordinance makes the requirements of §59-G-2.13.1(a) also applicable to daycare facilities with more than 30 children, which are approved by the Board of Appeals.

this section requires 6 spaces for each employee and 9 spaces for discharge and pick up of children. The petition provides 15 spaces, the requisite number required by the Zoning Ordinance $((52/6) + (6 \times 1) = 14.66)$.

(3) *an adequate area for the discharge and pick up of children is provided;*

Conclusion: While Technical Staff found that on-site circulation was adequate, the Planning Board expressed concern that there was inadequate circulation because of stacking that may occur if cars had difficulty exiting the property. Petitioners provided a delay study which demonstrated that there were 14 gaps of sufficient length for vehicles to exit the property during the peak hour, which would accommodate peak hour vehicles. It also provided information that there was sufficient room in the lower driveway to permit at least two cars to queue, and additional information that more car storage was available in the upper parking lot. The Hearing Examiner finds from this evidence that there is an adequate area for discharge and pick-up of children.

(4) *the petitioner submits an affidavit that the petitioner will:*

- (A) *comply with all applicable State and County requirements;*
- (B) *correct any deficiencies found in any government inspection; and*
- (C) *be bound by the affidavit as a condition of approval for this special exception; and*

Conclusion: Petitioners have submitted the required affidavits in Exhibits 1(c) and (d).

(5) *the use is compatible with surrounding uses and will not result in a nuisance because of traffic, parking, noise or type of physical activity. The hearing examiner may require landscaping and screening and the submission of a plan showing the location, height, caliper, species, and other characteristics, in order to provide a physical and aesthetic barrier to protect surrounding properties from any adverse impacts resulting from the use.*

Conclusion: Technical Staff found that the use, as conditioned, would be compatible with surrounding uses and that traffic, parking and noise would not result in a nuisance. Both Technical Staff and the Planning Board found that the landscaping, sight tight fence, and retaining wall sufficiently screened the reduced setback on the northern property line (discussed in more detail in

the next section of this Report) from the dwellings immediately to the north. The Hearing Examiner agrees and finds that the Petitioners have created a significant landscaped buffer to screen the parking facility, which in combination with the distance from the dwellings north of the property, is more than adequate to mitigate the reduced setback.

The Hearing Examiner, however, does not believe it necessary to impose a condition requiring the Petitioners to make a good faith offer to the adjoining neighbors to plant additional trees on property not owned by the Petitioners. The Hearing Examiner has absolutely no evidence in the record, other than the Planning Board's conclusion, that this would be possible, desirable or necessary.

(b) *A child day care facility for 31 or more children may be approved by the Board of Appeals subject to the regulations in subsection (a), and the following additional requirements:*

(1) *a landscaping plan must be submitted showing the location, height or caliper, and species of all plant materials; and*

Conclusion: An appropriate Landscaping Plan was submitted as Exhibit 20.

(2) *in the one-family residential zones, facilities providing care for more than 30 children must be located on a lot containing at least 500 square feet per child. The Board may reduce the area requirement to less than 500 square feet, but not less than 250 square feet, per child if it finds that:*

- (A) *the facility will predominantly serve children of an age range that require limited outdoor activity space;*
- (B) *the additional density will not adversely affect adjacent properties;*
- (C) *additional traffic generated by the additional density will not adversely affect the surrounding streets; and*
- (D) *adequate provisions for drop-off and pick-up of students will be provided.*

The Board may limit the number of students outside at any one time.

Conclusion: The subject property comprises 41,006 square feet and Petitioners propose a maximum of 52 students on-site at one time. Thus, the use as proposed will house 788 square feet per child. Exhibit 19, p. 21; T.98. This requirement has been met without the need for a waiver.

- (c) *The requirements of Section 59-G-2.13.1 do not apply to a child day care facility operated by a nonprofit organization and located in:*
- (1) *a structure owned or leased by a religious organization and used for worship;*
 - (2) *a structure located on premises owned or leased by a religious organization that is adjacent to premises regularly used as a place of worship;*
 - (3) *a structure used for private parochial educational purposes which is exempted from the special exception standards under Section 59-G-2.19(c); or*
 - (4) *a publicly owned building.*

Conclusion: This section is not applicable.

D. Other Applicable Standards

Section 59-G-1.23. General development standards.

- (a) *Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

Conclusion: The following from the Technical Staff Report (Exhibit 19, p. 9), demonstrates compliance with all applicable development standards:

Current Development Standard: R-200	Standard	Proposed
Minimum Lot Area	20,000 sf	41,006 sf
Minimum Lot width: <ul style="list-style-type: none">• @ Front building line• @ Street line	100 ft 25 ft	150.4 ft 150.0 ft
Minimum Building Setback: Front Side <ul style="list-style-type: none">▪ One side▪ Sum of both sides▪ Rear	40 ft (EBL) 12 ft 25 ft 30 ft	53 ft 42 ft 92 ft 161 ft
Maximum Building Height	50 ft	17.85
Maximum Building Coverage	25% (10,251 sf)	5.5% (2248 sf)
Maximum Front yard surface cover	30% (2752 sf)	24% (2,199 sf)

(b) *Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.*

Conclusion: As previously discussed, Petitioner has provided the requisite number of parking spaces required by §59-E-3.7 of the Zoning Ordinance, but requests a reduction of the minimum setback for a parking facility established in §59-E-2.83(b). That section provides:

(b) *Setbacks.* Each parking and loading facility, including each entrance and exit driveway, must be set back a distance not less than the applicable building front and rear yard and *twice the building side yard required in the zone.* The following additional setbacks must be provided for each parking facility:

- (1) if 150 to 199 parking spaces are provided, the required side and rear parking facility setbacks must be increased by 5 feet;
- (2) if 200 or more parking spaces are provided, the required side and rear parking facility setbacks must be increased by 10 feet. (emphasis supplied).

According to Technical Staff, the minimum required side yard setback in the R-200 Zone is 24 feet. The northern edge of the parking facility is within 6.6 and 7 feet of the side property line, necessitating a waiver of approximately 18 feet from the setback requirement.⁵ Exhibit 19, p. 10.

Section 59-E-4.5 of the Zoning Ordinance authorizes the Board of Appeals to waive of any of the parking standards in Article 59-E, if the waiver is “not necessary to accomplish the objectives in Section 59-E-4.2.” These objectives are:

(a) The protection of the health, safety and welfare of those who use any adjoining land or public road that abuts a parking facility. Such protection shall include, but shall not be limited to, the reasonable control of noise, glare or reflection from automobiles, automobile lights, parking lot lighting and automobile fumes by use of perimeter landscaping, planting, walls, fences or other natural features or improvements.

(b) The safety of pedestrians and motorists within a parking facility.

⁵ Petitioners do not need a waiver of the setback requirements for the area within the right of way for Frederick Road because the right of way is 120 feet in width. *Zoning Ordinance*, §59-E-2.81(b)(1).

(c) The optimum safe circulation of traffic within the parking facility and the proper location of entrances and exits to public roads so as to reduce or prevent traffic congestion.

(d) The provision of appropriate lighting, if the parking is to be used after dark.

As already described, the Petitioners propose to mitigate the reduced setback by installing a retaining wall, site tight fence, and significant landscaping along the northern property line. Nothing in the record indicates that this will be insufficient to screen the facility from the neighbors to the north. According to Ms. Bryant, the parking area has been designed so that no headlights will point toward the northern properties, as cars will be parking facing south. T. 19. In addition, the dwellings are located a significant distance from the facility (approximately 75 feet), and the photometric study shows that there is no light spillage beyond the northern property line. Based on this evidence, the Hearing Examiner finds that a waiver is warranted under §59-E-4.5, and will not have an adverse impact on adjoining residences.

(d) Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

Conclusion: Technical Staff advises that a forest conservation plan exemption (42011129E) was confirmed for the subject property on March 17, 2011. Thus, no Preliminary Forest Conservation is required.

(e) Water quality plan. If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.

Conclusion: This property is within a special protection area designated by the Clarksburg Master Plan. The Petitioners have received approval of the water quality plan submitted into the record of this case that has been approved by both the Planning Board and the Department of Permitting Services. The Hearing Examiner finds that this standard has been met and will make compliance with the conditions of approval imposed by the Planning Board a condition of this special exception.

(f) *Signs. The display of a sign must comply with Article 59-F.*

Conclusion: As discussed in Part II.D. of this report, Petitioner seeks to erect a sign that significantly exceeds the size permitted in residential zones. As stated earlier, the Hearing Examiner does not find that the 15 square foot sign is in keeping with the single-family residential character of the neighborhood, and therefore, does not recommend approval of the proposed sign.

(g) *Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

Conclusion: The Hearing Examiner finds that Petitioners have met this standard. The building orientation does not change and the addition has been located in the rear of the property so it is not visible from the front. She agrees with Petitioners' architect that the addition will look more like a bedroom or kitchen addition to the existing single-family home. This is reinforced by the fact that Petitioners propose to retain many of the exterior materials and architectural features of the existing dwelling with only some modifications necessary to adapt the building to the proposed use. Based on the evidence before her, the Hearing Examiner finds that the daycare facility will be compatible with surrounding residences.

(h) Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

(1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.

(2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

Conclusion: As demonstrated in Exhibit 17(f), the Petitioners' photometric study, the lighting will not cause glare on adjoining properties, nor exceed the 0.1 foot-candle standard at the side and rear property lines.

Section 59-G-1.26. Exterior appearance in residential zones.

A structure to be constructed, reconstructed or altered pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted and must have suitable landscaping, streetscaping, pedestrian circulation and screening consisting of planting or fencing whenever deemed necessary and to the extent required by the Board, the Hearing Examiner or the District Council. Noise mitigation measures must be provided as necessary.

Conclusion: As discussed above, the modified structure will be designed to be compatible with its surroundings, and will be appropriately landscaped and screened. Adequate noise attenuation will be provided by the Trex fencing at the southern end of the playground. It will also have suitable pedestrian circulation.

Based on the testimony and evidence of record, I conclude that, with the recommended conditions, the plans proposed by Petitioner meet the specific and general requirements for the proposed use, and that the Petition should be granted, with the conditions recommended in the final section of this report.

V. RECOMMENDATION

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition S-2850, which seeks a special exception for a child day care center on property zoned R-200 located at 22929 Frederick Road, Clarksburg, Maryland, described as Parcel 696 (Tax Account No. 0017853), be ***granted*** with the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, including its revised Statement of Operations (Exhibit 21(a)) and by the testimony of its witnesses and representations of counsel identified in this report;
2. Pursuant to Section 59-G-1.22 of the Zoning Ordinance, Petitioner shall obtain approval of a site plan for the proposed use from the Montgomery County Planning Board;
3. Petitioner must comply with the terms of its revised Site Plan (Exhibit 18(b)), its revised Landscape Plan (Exhibit 20), and its Lighting Plan (Exhibit 17(g)), except that Petitioner shall include a 3-foot high evergreen hedge or retaining wall at the southern border of the parking area to the rear of the structure at the time of site plan review. All amendments to these plans resulting from approval of a site plan by the Montgomery County Planning Board shall be filed with the Board of Appeals;
4. No more than 52 children and 6 staff members may be present on the site at one time;
5. Petitioners shall install a 6-foot Trex or other noise attenuation sight tight fence, with a minimum sound rating of Sound Transmission Class 19, on the south side of the outdoor play area;
6. All child drop-off and pick-up shall occur on-site; except for those children picked up or dropped off by public transportation;
7. All parking for special events held on the subject property shall occur within the parking area shown on the site plan (Exhibit 18(b));
8. No more than 25 children shall utilize outdoor play areas at one time;
9. Hours of operation are limited to 6:30 am to 6:30 pm, Monday through Friday, year-round;
10. No amplified sound or public address system of any kind shall be used outside of the building;

11. The facility must utilize residential trash service;
12. The exterior pole lights in the parking area shall be turned on only during the hours of operation;
13. The Petitioners must obtain approval of a Preliminary Plan per Chapter 50 of the Montgomery County Code. If changes to the site plan or other related plans are required at subdivision, the Petitioners must file a copy of the revised site and related plans with the Board of Appeals;
14. No sign may be posted on the subject property unless and until Petitioner obtains a modification of this special exception approval, unless the sign (1) meets all standards for signs on residentially zoned property, (2) receives all necessary approvals from the Department of Permitting Services, and (3) is placed at the location shown on the approved site plan (Exhibit 18(b));
15. Petitioner must comply with all the conditions of approval of the water quality plan approved by the Planning Board and the Department of Permitting Services (Exhibit 11(a));
16. Petitioner must comply with all Maryland State and Montgomery County licensure requirements and standards for the operation of a child day care facility;
17. In accordance with Code § 59-G-2.13.1(a)(4), the Petitioners are bound by the Affidavit of Compliance submitted in connection with this case, Exhibit 1(c) and (d), certifying that the operator will comply with and satisfy all applicable State and County requirements, correct any deficiencies found in any government inspection, and be bound by the affidavits as a condition of approval for the special exception;
18. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: March 18, 2013

Respectfully submitted,



Lynn A. Robeson
Hearing Examiner

APPENDIX

1. Ms. Victoria Bryant:

Ms. Bryant qualified as an expert in land planning and landscape architecture. She testified that the subject property is zoned R-200, which permits daycare facilities as a special exception use. T. 25-26. She delineated the neighborhood as including surrounding properties that are within the R-200 Zone. The northern border of the neighborhood as she defines it runs along properties to the north of Suncrest Avenue along Timber Creek Lane to the east, Shawnee Lane to the south, and generally to the rear property lines of properties fronting Md. Route 355 to the west. T. 27-28. While the neighborhood she delineates is smaller than that defined by Technical Staff, Ms. Bryant believes that there is no significant difference between the two. She used the smaller neighborhood boundaries to follow those properties identified in the Master Plan as being in the "Transit Corridor". The properties included by Staff to the north are in the RMX Zone, which is single-family although more compactly developed. She believes that both delineations are characterized by properties with a variety of sizes and shapes; addition of the RMX development just adds to the diversity. T. 28.

Ms. Bryant opined that the intensity of special exception uses does not change under either neighborhood delineation. There is one special exception, a landscape nursery that is approximately 4 properties distant from the subject property and is within both neighborhoods. The next nearest special exception use lies outside both neighborhoods. T. 30-31.

Immediately adjacent properties include single-family detached dwellings to the south, a 10-acre residential property to the east, a five-lot subdivision (with panhandle lots) to the north, and large tracts of undeveloped forest to the west across Md. Route 355. Further away, there are some single-family detached homes along Coolbrook Lane to the south, a church facility to the southwest across Rt. 355, and single-family homes lining Timber Creek Lane to the north and east. T. 32.

Currently, the subject property is improved with a one-story single-family home with a walk-out entrance on the northern side yard, according to Ms. Bryant. The property slopes downward from east to west; the slope is gradual until approximately 10 feet in front of the building when it becomes steep. There are no significant environmental features on the site. The proposed development is exempt from the County's Forest Conservation Law. T. 32-33.

Ms. Bryant described the proposed use. The existing driveway will be widened to 20 feet. Upon entering the driveway, there will be 4 parking spaces on the right side with an ADA accessible van space. T. 34. A stormwater management feature will also be located on the northern side of the building. An additional 11 parking spaces are located to the rear of the building. T. 34. The large open area on the southeast of the building houses the septic field. T. 35-36.

There are two entrances to the building. People parking in the lower level may enter via a sidewalk leading to the basement. If parking on the lower level, people may enter through a porch on the back of the building. T. 34.

Landscaping along the northern property line is designed to shield the parking area from the adjacent single-family homes. T. 34. Landscaping along this boundary will include arborvitaes, hollies, and low-growing shrubs. T. 39. A retaining wall and a 6-foot high sight type fence provides additional screening. T. 39. The parking area will be landscaped with shade trees providing sufficient canopy to reduce the temperature of the parking lot. T. 34. An evergreen hedge screens the southwest edge of the parking area from Route 355. T. 39. The western border of the building is landscaped with plant materials supporting the stormwater management facility.

A path along the rear of the property leads to the outdoor play area. The play area may also be accessed from the lower level through a staircase and the upper level through a sidewalk. T. 34-35.

Ms. Bryant described the location of the parking area in relation to the Winter's property. The southern boundary of the parking area is 105 feet from the southern property line. There is an additional 30 feet between the property line and the Winter's home, for a total distance of 135 feet. T. 37. The current plan shows large red maple shade trees screening the parking area. The grade gradually slopes approximately four to five feet down from the Winter's home to the parking area. The gradual grade steepens as it approaches the parking area. T. 43-44. The existing grade will screen approximately one foot of the parked cars. T. 44. There is sufficient room to permit an additional three-foot hedge or low wall on the southern side of the parking area. The Petitioner would agree to a condition requiring a hedge or low wall along the southern boundary of the parking area to provide additional screening from car headlights. T. 43.

According to Ms. Bryant, the outdoor play area will house a play area, Little Tykes play equipment, and have an engineered wood surface. T. 45. Three black-vinyl coated chain link fences along the northern, eastern and western sides of the playground. The vinyl coating reduces the visibility of the fence.

A Trex sight-type fence will screen the playground from the Winter's property along the southern boundary. According to Ms. Bryant, the Trex fence has some sound attenuation qualities. T. 46. She submitted a report from an acoustical engineer, Mr. George Spano, concluding that noise levels at the outdoor play area at Petitioners' Adamstown facility reaches approximately 65 dba at times. The report concludes that the Trex fence will reduce that level by 5-10 dbas, resulting in peak noise levels between 60 and 63 dbas. T. 52.

Ms. Bryant described the proposed sign. The Petitioners propose one three by five-foot rectangular sign totaling 15 square feet. The sign will not be illuminated. Because the sign exceeds the maximum area permitted, the proposed sign will need a variance approved by the Sign Review Board. The Petitioners do not oppose a condition on this special exception approval requiring the variance. Ms. Bryant disagreed with the Planning Board's finding that the sign was too large because it is setback from the paved road by approximately 60 feet and from the right-of-way by 30 feet. In her opinion, the sign will not be out of scale considering the speed of traffic and the distance from the road. T. 54-56.

In Ms. Bryant's opinion, the inherent characteristics of a special exception for a daycare facility include the building and outdoor play area, the parking lot, additional lighting, noise from the children in the outdoor play area, longer hours of operation, and traffic impact from employees and parent drop-off and pick-up. T. 58. She disagrees with Staff's finding that the waiver of the setbacks for a parking facility is non-inherent to the use. In her opinion, the waiver does not adversely impact the adjacent property owners to the north due to the sight type fence, retaining wall, and landscaping. The grade change between the driveway and the adjoining property in that area also helps to screen the driveway. T. 58. The adjacent homes are also buffered because each is setback approximately 75 feet due to the pipestem driveways. T. 29.

She testified that a waiver of the setback requirements for a parking facility meets the standards for approval in the Zoning Ordinance because it will not adversely impact the health, welfare and safety of the adjacent uses, traffic on either the public road or vehicle circulation within the site. Ms. Bryant believes that the additional buffering along the northern edge of the drive aisle more than compensates for the additional 10 feet of setback because the driveway has been so effectively screened from the north. T. 60. Properties to the north will not experience the shine from headlights because the cars will enter pointing east, pull in facing south, reverse

and pull forward facing the southwest. T. 58-59. She opined that a waiver will not impact pedestrian safety because all of the parking is located on the same side of the building, reducing pedestrian conflicts within the parking lot. T. 59-60. Site circulation is adequate and they have both widened the driveway to 20 feet and raised it by 3 inches at the access to Route 355 to increase existing sight distance. T. 61.

The photometric plan for the property, in her opinion, shows that the use will not have an adverse impact on adjoining properties because it demonstrates there will be no light spillage onto adjacent property; there are 0 footcandles at the property line and the County standard requires a minimum of 0.1 footcandles there. Lighting includes two 12-foot high poles with a "shoebox" light fixture, which is a square-shaped fixture at the top of the pole. One of the pole lights is located in the lower parking area in front of the building and one is located in the upper parking area. In addition to the pole lights, there are two "type B" fixtures called "wall packs", which are little square boxes that are located next to the entrances. T. 62. Each of the fixtures are full cut-off fixtures, which directs the light downward rather than to the sides of the fixture. T. 64. The lights will be turned off a few minutes after 6:30 p.m. each weekday when staff leaves. T. 63.

According to Ms. Bryant, the use complies with the Clarksburg Master Plan. It is within the Hyattstown special study area. While the Plan makes no specific recommendation about the site, the use is permitted by special exception under the R-200 Zone. T. 65-66. The Plan also forecasts a "profound" need for daycare facilities because of the number of dwellings planned for the area. The Plan recommends that these facilities be located near transit, housing and employment. In her opinion, the facility is close to the new housing located to the north and to the Town Center in addition to the existing homes in the immediate area. The property is located

within the transit corridor identified in the Plan; a transit stop is planned near the intersection of Shawnee and Observatory Drive, and one a little further north on Route 355. T. 65-66.

In Ms. Bryant's opinion, the use is in keeping with the size and scale of the surrounding community, another goal of the Master Plan. T. 66. It is a brick rancher-style home consistent with the existing 15- 20-year old homes in the immediate area. With the addition in the rear, the building's footprint is typical of the homes in the area. T. 66-67. The proposal serves as an appropriate transition between the existing older neighborhood to the south and the more modern homes which are larger. T. 66.

She testified that the daycare is able to comply with the County's noise standards. The limitations on play times and the number of children that may be outside at one time will serve to ensure that these standards will be met. T. 68.

Ms. Bryant also concluded that the facility will maintain the existing residential character of the neighborhood because, from the public road, it will be difficult to determine whether this is a residential or commercial use. T. 69. Nor does she think that the daycare will intensify the impact of special exceptions in the area. There is only one existing special exception, the Green Gardens horticultural nursery and commercial greenhouse, which has been in operation since 1976 or 1979. It is not a retail use; everything is picked up from the nursery and unloaded into people's yards. T. 69. There are no other special exceptions in the defined neighborhood, although there is another daycare facility located at Old Baltimore Road and Md. Route 355. T. 69-70. It is approved for a maximum of 283 students, 163 of which will be pre-school and 120 of which are of school age. It has a staff of 41 employees. T. 70. She researched the status of the Avalon School, located to the south of the Winter's property. According to Ms. Bryant, the school had obtained an extension of time to implement its approval until October, 2011, and have not reapplied for a new special exception. T. 70. Nor have any building permits been

pulled for construction. As a result, she believes that the special exception has expired. T. 70-71.

She does not believe that the use will be detrimental to the use and enjoyment of other properties. The scale of the building is residential and the hours of operation are primarily during the day when individuals are at work. The building itself meets all setback requirements. The minimum building setback is 12 feet on one side and 25 feet total. The building is set back 12 feet from the northern property line and 13 feet from the southern property line. The height of the building, 17.85 feet, is well under the 50-foot maximum height for the R-200 Zone. As a result, she concluded that the structure will meet all of the development standards in the zone. T. 74.

Ms. Bryant further observed that the facility will not cause any objectionable noise, fumes odor or dust because it will use only residential trash pick-up (i.e., no dumpsters) and there is no on-site transformer. T. 75. Nor will food be delivered to the site. T. 76.

Ms. Bryant believes that there is adequate parking for the facility. The Zoning Ordinance requires one space for every staff member and one for every six children. This results in a requirement of 15 spaces, which is what the special exception plan proposes. T. 77.

On cross-examination, Ms. Bryant testified that 22.6% of the site is impervious, but is not within the area of the Master Plan recommended for caps on impervious area. T. 87. According to her, Technical Staff's environmental review applies a percentage of impervious area that is considered typical of the particular zone. She believes that Staff uses 16-19% impervious area as typical for the R-200 Zone. As the daycare's impervious area is 22.6%, environmental staff recommended approval of the petition. T. 87.

She also testified that the tot lot cannot be moved to another area of the property. This is because the driveway and parking had to be located on the northern side, the building already

exists and the balance of the rear of the lot is primarily septic field. T. 89. She did consider the difference in grade between the Winter's property and the subject property when evaluating the site. T. 91. The topography lines show a difference of two feet between the Winter's property (that is higher) and the subject property across the mid point. If one assumes that the Winter's home is elevated approximately three feet, the difference would be five feet. T. 91-92. The Petitioners are proposing a six-foot fence and some evergreen and shade trees. The shade trees will eventually grow to approximately 50-60 feet and the evergreens will grow to between 10 and 15 feet. T. 93.

2. Mr. Stephen Crum:

Mr. Crum testified as an expert in civil engineering. T. 109. He described the physical characteristics of the property. The property slopes upward from Route 355 to the east. The grade toward the rear is gently than the grade nearer the road. The dwelling on the Winter property is slightly higher than the building on the subject property. The existing driveway is residential; Petitioners will improve the driveway to State commercial standards, including widening it to 20 feet. T. 111. Existing utilities include a fire hydrant in front of the property, public water, electricity and telephone.

Mr. Crum testified that the property will not be served by public sewer. The public sewer line runs behind the dwellings to the north. In order to reach the subject property, Petitioners would have to obtain an easement from the property owners of the pipestem lots and install a fairly sizeable extension. In addition, the extension would have to be pressurized, which the WSSC does not favor. T. 112.

Mr. Crum stated that he researched the WSSC records, which listed the property's sewer category as S-0, which does not exist. He believes that the category is actually S-6. T. 113. There is an existing septic system in the front of the property which is not sufficient to serve the

daycare. It consists of two seepage pits, methodology used in the 1960's. The Petitioners propose to locate a new septic field in the rear (eastern side) of the property. Petitioners propose to eliminate the seepage pits in front and install a new septic tank and pump chamber there.

Effluent will then be pumped to the fields in the rear for treatment. T. 114. The rear field contains trenches which are approximately two feet wide and four feet high filled with aggregate and perforated pipe. Montgomery County has issued a permit to the Petitioners to install the new system that remains valid. T. 116. The septic field on the plan is large because the County requires installation of replacement trenches. T. 116. The tot lot may not be over the septic field because the County does not permit grading over the septic areas. In addition, the play equipment is anchored on foundations, which are also not permitted in septic fields. T. 116-117.

Mr. Crum also explained the purpose of the special protection areas. These were established to protect areas in which there are high quality streams. Instead of submitting a stormwater management concept plan, the Petitioners are required to submit a water quality plan. These are reviewed by various County agencies, including the Planning Board. The Petitioners submitted a water quality plan, which was approved by the Planning Board for those matters within their jurisdiction. T. 116-118. DPS has approved the preliminary water quality plan as well. T. 120.

Mr. Crum stated that the property still has to undergo preliminary plan approval and he does not know any obstacles preventing that approval. He stated that one tree will encroach into a public utility easement, but they will install underground cable in the event that utilities every need to be placed underground. This will eliminate the need to excavate the easement if the utilities ever decide to install the utilities underground. T. 124.

On cross-examination, Mr. Crum testified that the septic will be of adequate size to serve the proposed number of students and staff and that it will not adversely impact Mr. Winter's property. T. 135-137.

3. Mr. Richard Washburn:

Mr. Washburn qualified as an expert in architecture. T. 140. He described the existing structure as a three-bedroom single-family dwelling on one level with a basement. There is a walk-out exit, which is the garage overhead door on the northern side of the property. The exterior is brick on all four sides with a shingled roof, standard windows and a chimney. T. 141-142.

According to Mr. Washburn, the Petitioners plan several modifications to the existing building. The roof will have a higher pitch and they will add dormers to the roof. The existing door, which is now on the left side of the front entrance, will be located on the right side and will serve as an exit door for a classroom. The brick will be retained, but re-painted. T. 142.

The north side of the building will have an entrance to the lower level where the existing garage walk-out is located. That side will not have many changes except the higher roof pitch and dormer windows. T. 142.

The addition is located on the rear (or east side) of the building. He used a reverse gable roof to prevent the addition from being seen from the front of the property. Another entrance is located to the side and rear of the building. T. 143.

Few changes to the façade of the southern side are proposed. It will still have a chimney, shingle roof, and an eight-foot eave height. The overall height of the building will be 24 – 25 feet at the ridge. T. 143.

Mr. Washburn testified that the building is designed to maintain its residential appearance. He accomplished this by retaining the exterior residential materials and the large-

paneled glass windows, T. 143-144. The rear addition will have hardy-board siding. T. 144. Mr. Washburn stated that both the interior and exterior are designed to be ADA compliant.

Mr. Washburn opined that the proposed building will be consistent with the residential character of the neighborhood. The addition will look like a bedroom or kitchen that has been added to the home. T. 145. From the front of the property along Frederick Road, the addition will not be visible. T. 146.

The building's interior will consist of a basement and first floor. The dormers are used to provide space and light; they are not a second story. T. 147.

The lower level has an ADA compliant entrance from the front (lower) parking lot where the handicapped space is located. It houses a classroom, utility spaces, a handicapped accessible bathroom, and a storage area. The storage area has high windows, and has not been designed for classroom space. T. 148. There is a second exit to the rear of the building and one to the play area. T. 148. An interior stairway leads to the upper level, which contains a small kitchen, office, restroom, and three classrooms. T. 149. Each classroom has an exterior exit, which is a code requirement. T. 150.

In Mr. Washburn's opinion, the design of the building meets the requirements of Section 59-C-1.23(g) of the Zoning Ordinance. The siting of the building remains unchanged. The existing footprint of the building is approximately 1,300 to 1,400 square feet; the footprint of the addition is less than half of that, or 600 square feet. T. 151. In addition, he did not change the existing eave height—only the roof pitch has been raised. All of the exterior materials are residential in nature. T. 151.

4. Mr. Carl Wilson:

Mr. Wilson qualified as an expert in transportation planning and traffic engineering. T. 154. This use will primarily impact Frederick Road, as most of the trips are pass-by trips. T.

155-156. Currently, Frederick Road at this location is a two-lane undivided road with a 3-5 foot shoulder on each side of the road. The Master Plan right of way is 120 feet. No significant improvements are planned for Frederick Road, which is a State road. T. 153-156.

The new TPAR policy, rather than the former Policy Area Mobility Review (PAMR) applies to this application. The TPAR still divides the County into policy areas, and the subject property is in the Clarksburg Policy Area. T. 158. Under the TPAR, there is sufficient capacity in the Policy Area to accommodate the use, although this will be reviewed again during preliminary plan approval. T. 160. The new test requires review of both highway and transit capacity. Available transit capacity is measured by the amount of time between bus trips. This area is considered mostly rural and the transit capacity here is not sufficient. As a result, according to Mr. Wilson, the Planning Board and MCDOT are working on a mitigation program to permit projects to proceed by paying a fee at preliminary plan approval. T. 160-161.

Local Area Transportation Review (LATR) still applies under the new adequate public facilities test. According to Mr. Wilson, the daycare facility will generate 28 peak hour trips in the morning and the evening. As this is less than 30 trips necessary to trigger a requirement for a traffic study, he submitted a "transportation statement" to Technical Staff. T. 159. He found that half of the trips will be entering the facility and half will be leaving the facility during the peak hours, which is consistent with parent drop-off and pick-up. T. 159. These numbers are based on a student enrollment of 59 and six teachers employed at the facility. T. 160. Technical Staff reviewed the traffic statement and agreed with its findings. T. 162.

Mr. Wilson described the site circulation of the proposed use. T. 163. Teachers will park at the rear of the parking lot; spaces closer to the building will be used for parent drop-off and pick-up. The driveway will be two lanes, one lane in and one out. There is sufficient throat area in the driveway to provide storage for two vehicles waiting to exit the property at the same time.

T. 163. Widening of the existing driveway will be on the south and east sides, as it is as close to the northern property line as it can be. T. 164.

In addition to adding width to the driveway, the Petitioners propose to raise the driveway by three inches in order to ensure adequate sight distance along Frederick Road. SHA requires a minimum sight distance of 325 feet. Currently, there is a vertical curve along Frederick Road that restricts sight distance to 315 feet. The additional height of the driveway will add 10 feet to the existing sight distance, thus meeting SHA standards. T. 164.

Mr. Wilson also testified that vehicles entering and exiting the driveway from both directions will have adequate time to make the turn. T. 165. To determine this, they used the analysis methods in the Highway Capacity Manual, which analyzes the actual operation of the intersection, rather than simply measuring critical movements. They assumed conservatively that 75% of the traffic would enter the site from the north. Their study indicated that the morning southbound traffic will have a delay time of 8 seconds, or Level of Service A. Left turns exiting the site in the morning will experience a 13.1 second delay. In the evenings, he found that left turns into the site would experience a 10.9 second delay, or Level of Service B. Based on his study, left turns exiting the site will experience a 24-second delay, or Level of Service C. All of these levels of service are acceptable. In his opinion, the available storage at the driveway throat is adequate because there will only be 14 trips leaving during the peak hour. There is sufficient space to permit cars to back out and stack further toward the rear of the parking area as well. T. 165-167.

Mr. Wilson also stated that his firm prepared a gap study at the request of the Planning Board. To prepare the gap study, his firm videotaped traffic along Frederick Road during the morning and evening peak hours. Software applied to the video can measure the actual time between cars as they pass the property. The "gap" is the amount of time between cars passing

through the intersection of Frederick Road and the driveway. AASHTO, or the American Association of Safe Highway Transportation Officials, sets the standards for the gap times which should be available to different roads. For a left turn from a minor street, which is the driveway entrance, the gap must be 7 seconds. For a right turn, a gap of 6 ½ seconds is required. A left turn from a major road requires 5 ½ seconds. These gaps apply regardless of the speed limit. T. 168-170.

Their study found the smallest number of gaps occurred in the left turn movement exiting the site in the morning peak hour. During this time, there were 52 gaps available to cars making a left turn from the driveway onto Frederick Road . As there will be only 14 trips exiting the site, there are sufficient gaps to accommodate this movement. Some of the gaps are as large as 16 to 18 seconds, which may permit more than one car to exit during a single gap. This result is consistent with the HCM analysis performed for the site, which indicates that delays will be minimal. T. 170-171.

In addition to the gap study, Mr. Wilson's firm pulled crash data available from the State Highway Administration. According to Mr. Wilson, the accident activity at this location is minimal. These records are kept only for accidents where the car is not drivable from the scene or there is personal injury. He stated that there is no way to obtain records tracking fender benders. T. 171-172.

Mr. Wilson testified that cars may not park along the shoulder of Frederick Road because it is only 3-5 feet in width. He had not studied how parking for special events at the school would be handled. T. 175.

On cross-examination, Mr. Wilson testified that even though the gap study had been based on traffic from a single weekday, the results were consistent with other data, including

SHA volume counts and a speed study that was performed. The delays shown in the HCM analysis were also consistent with both the gap study and the SHA volume counts. T. 182-183.

5. Ms. Shirley Vesper:

Ms. Vesper testified that she is the Director and a teacher at the Creative Memories Early Learning Center in Adamstown, Maryland, and that she and Michael Vesper, as well as the Creative Memories Early Learning Center Incorporated, are co-applicants. She and Mr. Vesper are acting on behalf of themselves and the corporation. T. 184-185. She understands that she will be bound by all conditions imposed by the Board of Appeals if the special exception is approved. T. 188.

Ms. Vesper described the proposed operation of the daycare facility. The maximum number of individuals on-site will be 52 students and six teachers. There may be more individuals enrolled because some students are part time and two children share one spot. She has been director of the Adamstown facility for five years and has been working in daycare for eight years. In her experience, the children do not all arrive at the same time. Rather, arrival times are staggered between 6:30 a.m. and 10:00 a.m. Several families will have siblings enrolled. The facility will operate only on Mondays through Fridays; it has no weekend operations. Staff members will arrive approximately 10 or 15 minutes before the 6:30 a.m. opening time and leave 10 or 15 minutes after the 6:30 p.m. closing time. T. 189.

Lights will be turned on when staff members arrive and will be turned off when they leave during those parts of the year when daylight is not available. They are not motion sensor lights and will be turned on and off manually. T. 190.

The daycare will offer a full-time program for infants and children up to five years of age. A before and after care program will be offered for children between six and 12 years old. T. 190.

According to Ms. Vesper, there will be three special events during the year: one at Christmas, one at graduation, and possibly one for the school's anniversary. T. 190. The celebrations are done one class at a time with 15-minute breaks between in the evenings; the facility will close early the day of the celebration. The maximum number of children permitted in each class will be 15 students. At the existing facility, one of the celebrations occurs off-site and the graduation is limited to 4-5 year olds. Therefore, other students will be vacating the building while the event begins. In her experience, the 15 parking spaces will be adequate for special events. T. 192-193.

One of the teachers will also serve as director of the school, Ms. Vesper stated. The director is in charge of staffing, scheduling, and making sure that the school stays in compliance with all State regulations. T. 194. There would be a staff person available to assist parents if they observed any congestion in the parking lot. In her eight years at the Adamstown facility, they have never had to designate an employee to monitor the parking lot full time. T. 194.

Ms. Vesper reiterated that the storage area in the basement of the building will not be used for a classroom. Parents whose children are in the basement classroom will enter from the lower level and sign their children in with the teacher. Parents of children who are in upper floor classrooms will enter into an area with an office, and proceed to the classroom to sign children in. T. 194.

Weather conditions permitting, two classes will be in the outdoor play area with a maximum number of 25 children at one time, although they generally average about 20 children. In cold weather, children are generally out for 15 minutes at a time, although on nice days they may be out for as much as 25 minutes. Two teachers are out on the play area with the children at all times. T. 197. They usually begin taking children out between 9:00 a.m. and 9:30 a.m. and they are usually back inside the daycare by 11:30 a.m. Quiet time is approximately between

Noon and 2:30 p.m., at which time the children have a snack. They begin phasing the children back out to the playground at approximately 3:00 p.m. and stay there until 5:00 p.m. depending on weather conditions. T. 198.

Based on her experience, the children do not make a lot of noise while they are playing. Generally, they are louder when they first enter the playground, but settle down once the teachers begin sending them to different play stations. She would not prefer to have a sight type fence surrounding the entire playground because she prefers the area to feel more open. She agrees to provide the sight-type Trex fence near the southern property line to reduce noise from the play area. T. 198-199.

Ms. Vesper testified that there will be a morning and afternoon snack served at the facility, but lunches are provided by parents. They obtain the snacks by driving to Costco; she does not expect large truck deliveries, except for occasional Fedex deliveries, at the property. T. 201. Trash service is residential; there are no dumpsters on the premises. There is a school bus stop located at the end of the shared driveways just to the north of the property. She would like to utilize that stop for children in the before and aftercare program, although she has yet to arrange that with the public schools. T. 202.

On cross-examination, Ms. Vesper stated that only the play area would be fenced for the security of the children. The remaining property will not be fenced. One hundred percent of the parking is on-site at the Adamstown property; there is no off-site parking. She could not say how many 5-12 year olds would be in the outdoor play area; that depends on staffing and annual enrollment. Before and after care activities are structured, including specific times in the outdoor play area. In her five years as Director of the Adamstown facility, she has received no complaints or zoning violations.

6. Mrs. Gloria Winter:

Mrs. Winter testified that she has lived on her property her entire life. The subject property, her daughter's property and her property were all part of a 200-acre farm owned by her grandparents. She and her husband own the 10-acre property adjacent to the east. Her daughter owns the property immediately to the south of the subject property. She believes that the building design is attractive and the daycare is a positive use for the community: Her main concern is that the noise generated by children in the outdoor play area will negatively impact her daughter. She is not sure that the 6-foot fence will be sufficient to address noise issues. T. 211.

Both she and her daughter live on a high ridge. In her experience, she can hear sounds from as far as a mile away that are generated in lower areas, such as a football game at Clarksburg High School. T. 214.

Her other concern is traffic. In her estimation, traffic is at a standstill on Frederick Road most days and she has seen many fender benders. T. 214-220.

7. Mr. Philip Winter:

Mr. Winter echoed his wife's concerns about traffic. He testified that his daughter works at the Pentagon and her husband works in Annapolis and both have to turn right onto Frederick Road on their way to work between 7:00 a.m. and 8:00 a.m. in the morning. They then take Springtown Road to I-270. He thinks, however, that this may have more to do with the buses from the high school. T. 220. Mr. Winter was also concerned about the possibility that the Avalon School would move forward—it is located immediately south of his property. T. 101.

His son-in-law is an engineer in sound communication and asked Mr. Winter to get answers to several questions on the expert's sound report. His daughter is convinced that this will affect the value of her property. T. 221. He is a professional appraiser and he is unsure

whether it will devalue her property or not. He believes that the use is legitimate. T. 223. He is skeptical of zoning because of Clarksburg's checkered past. He assumed the whole property would be fenced, although not having the fence is not a "big thing" to him. He does want adequate buffers and wants to make sure that the leach field will not encroach onto his property or his daughter's property. T. 223-224.